

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEBRASKA  
AT OMAHA, NEBRASKA

-----  
GUILLERMO HERRERA, III,

Plaintiff,

v.

Case No. 8:15-CV-426-JMG-CRZ

UNION PACIFIC RAILROAD  
COMPANY, a Delaware corporation,

Defendant.  
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VIDEO DEPOSITION OF  
SCOTT NICHOLSON

Milwaukee, Wisconsin

August 10, 2016

8:02 a.m. to 10:37 a.m.

Kim M. Peterson  
Registered Professional Reporter

## A P P E A R A N C E S

BRENT COON & ASSOCIATES, PC, 3801 East Florida Avenue, Suite 905, Denver, Colorado, 80210, by MR. JAMES L. COX, JR., jim.cox@bcoonlaw.com, appeared on behalf of the Plaintiff.

LAMSON, DUGAN & MURRAY, LLP, 10306 Regency Parkway Drive, Omaha, Nebraska, 68114, by MR. DAVID J. SCHMITT, dschmitt@ldmlaw.com, appeared on behalf of the Defendant.

UNION PACIFIC RAILROAD, 1400 W. 52nd Avenue, Denver, Colorado, 80221, by MR. TORRY N. GARLAND, tngarlan@up.com, appeared on behalf of the Defendant.

## I N D E X

WITNESS	EXAMINATION	PAGE
SCOTT NICHOLSON	By Mr. Cox	4

## E X H I B I T S

None

(The original transcript was sent to Mr. Cox.)

## P R O C E E D I N G S

VIDEOGRAPHER: We are now on the record. This begins DVD number one in the deposition of Scott Nicholson in the matter of Guillermo Herrera, III, v. Union Pacific Railroad Company, in the United States District Court for the District of Nebraska at Omaha, Nebraska, Case Number 8:15-cv-426-JMG-CRZ.

Today is Wednesday, August 10, 2016. The time is 8:02 a.m. This deposition is being taken at 207 East Michigan Street, Milwaukee, Wisconsin, at the request of Brent Coon and Associates.

The videographer is Jeff Wilhite, Magna Legal Services. The court reporter is Kim Peterson, Magna Legal Services. Will counsel and the parties present state their appearances and whom you represent.

MR. COX: I'm Jim Cox. I'm Guillermo Herrera's lawyer.

MR. SCHMITT: Dave Schmitt for Union Pacific Railroad.

MR. GARLAND: Torry Garland for the Defendant Union Pacific Railroad.

VIDEOGRAPHER: Will the court reporter

please swear in the witness.

SCOTT NICHOLSON, called as a witness herein by the Plaintiff, after having been first duly sworn, was examined and testified as follows:

## E X A M I N A T I O N

BY MR. COX:

Q Mr. Nicholson, good morning, sir.

A Good morning.

Q Would you give me your full name, please.

A Scott William Nicholson.

Q And where do you live now?

A Right now I'm living in Milwaukee.

Q And at what address?

A I don't have an address. I just stay at motels.

Q Are you employed?

A I am.

Q For whom do you work now?

A Union Pacific.

Q Do you have a permanent address?

A No, nothing that's my own.

Q What is your job with the Union Pacific now?

A Trackman.

Q And are you on a system gang, or what -- what is your job with the UP now? I mean, for whom are

you a trackman? Is it a section, a system?

A Yes, it is -- it is a section job here in Milwaukee. They cover grounds from Sheboygan down to Illinois.

Q And how long have you been working as a trackman for the UP?

A Well, initially when I came to the Track Department I was a trackman for at least two or three months. And then after having other various positions, I've been a trackman now since I came back from furlough about three or four months. It was -- Let's see. April? April I want to say came over here, yeah.

Q So when did you first work for the UP?

A I initially started working for the UP Railroad 2010, December 7.

Q All right. And have you been furloughed or laid off as a result of force reduction during that time since 2010?

A That is correct.

Q So when you talk about coming back from a furlough in April of 2016, you were furloughed at some period of time, reduction in force, and then recalled or able to rebid a job in April of 2016?

A That is correct, sir.

Page 6

1 Q All right. I'm going to get a little more into  
2 that in a minute. First I want to talk with you  
3 about what you've done to prepare for this  
4 deposition. Has anyone on the Union Pacific  
5 Railroad advised you of Guillermo Herrera's  
6 medical condition?  
7 A Yes.  
8 Q Who?  
9 A My attorney -- Well, Union Pacific's attorney told  
10 me that he may have some heart complications or  
11 something of that nature.  
12 Q All right. What else -- Tell me what you've done  
13 to prepare for the deposition. Have you been  
14 advised in any other way of any other medical  
15 complications that Guillermo Herrera having as a  
16 result of the heat injury on July 26, 2015?  
17 A Well, going back to July 26, 2015, I inquired  
18 about how he was doing in the months following the  
19 incident, and they just said he was still at home.  
20 And at one point they said they were just running  
21 tests, and that's all -- that's the only answer I  
22 ever got.  
23 Q And of whom did you make that inquiry?  
24 A Some of his -- his peers, people he roomed with.  
25 That was it.

Page 7

1 Q All right. Have you ever spoken to Mr. Herrera  
2 since July 26?  
3 A No, sir, I have not.  
4 Q With whom have you spoken prior to this deposition  
5 about this deposition? I understand possibly  
6 Mr. Schmitt and Mr. Garland. Anyone else? Did  
7 you ever speak with a claim agent?  
8 A A claim agent?  
9 Q A risk management person. For example, Bill  
10 Herring, or someone like that, who's from the  
11 Claims Department, a manager of claims?  
12 A When you say risk management, I did speak with a  
13 Doug Dietrich.  
14 Q Was it Doug Dietrich or Justin Dietrich?  
15 A Justin. It is Justin. My apologies.  
16 Q No problem. When did you speak with Mr. Dietrich?  
17 A Following the incident and correspondence -- well,  
18 not correspondence, but via voice mails just  
19 setting up this deposition process.  
20 Q Okay. Did Mr. Dietrich in any fashion advise you  
21 of anything that would affect your testimony here  
22 today?  
23 A He did not. We stayed on the surface. It was  
24 just always about when and where.  
25 Q Did you give Mr. Dietrich, or anyone else from the

Page 8

1 Claims Department, an oral or written statement  
2 about what had occurred on July 26, 2015?  
3 A I believe it was Mr. Dietrich that came out to the  
4 gang following the incident maybe -- possibly a  
5 day or two after. I don't recall exactly when,  
6 but it was after the incident on the 26th, and I  
7 gave an oral statement to him.  
8 Q And has the Union Pacific Railroad provided you a  
9 copy of that statement to review?  
10 A They have not.  
11 Q Would a copy of that statement serve to refresh  
12 your memory of events that occurred on July 26,  
13 2015?  
14 MR. SCHMITT: Object to the form.  
15 Foundation. Go ahead.  
16 THE WITNESS: No. I have a pretty  
17 good memory. I don't -- I don't need it.  
18 BY MR. COX:  
19 Q Okay. Did you ever request of them an opportunity  
20 to review your statement to refresh your memory?  
21 MR. SCHMITT: So I think the  
22 question -- There's a question pending. He's just  
23 asking --  
24 THE WITNESS: I'm thinking back.  
25 MR. SCHMITT: -- did you ever ask

Page 9

1 Justin to send it to you, is all he's asking.  
2 MR. COX: No, that's not what I asked.  
3 MR. SCHMITT: Oh.  
4 BY MR. COX:  
5 Q I asked if you've ever asked of anyone in the UP  
6 an opportunity to review your statement?  
7 A I really can't remember ever asking. That's why  
8 it was taking me so long to answer.  
9 Q All right. What is your age, sir?  
10 A Thirty-two.  
11 Q And can you tell me a little bit about where you  
12 were born and raised?  
13 A I was born in Omaha, Nebraska. I was raised in  
14 Westgate.  
15 Q Did you attend high school in Omaha?  
16 A I did.  
17 Q Did you graduate from high school?  
18 A I did.  
19 Q And did you have any education after high school?  
20 A I tried to take some college courses, but between  
21 being a parent and working for the railroad it  
22 just -- it wasn't -- it wasn't in the cards. I  
23 tried, but I wanted to make sure that my focus was  
24 on my job first and that I wasn't giving them --  
25 to make sure that I was giving them the attention

Page 10	Page 12
<p>1 the job deserved.</p> <p>2 Q Tell me about your employment before going to work</p> <p>3 for the Union Pacific in 2010. What jobs did you</p> <p>4 have?</p> <p>5 A I actually worked for -- Before 2010. I worked</p> <p>6 for Terry Hughes Tree Service.</p> <p>7 Q What did you do for Terry Hughes Tree Service?</p> <p>8 A Trimmed and removed trees.</p> <p>9 Q Any other jobs you can think of?</p> <p>10 A Well, before that I was in Texas. I lived there.</p> <p>11 Family owned a piece of property in the hill</p> <p>12 country, and I trimmed trees there as well, but --</p> <p>13 Q Sort of for your family on their property?</p> <p>14 A No, sir. No, sir. It was kind of like a mom/pop</p> <p>15 operation. Me and this fella around there just</p> <p>16 did it locally.</p> <p>17 Q Any other employment that you can think of before</p> <p>18 going to work for the UP in 2010?</p> <p>19 A Yeah. I mean, I can -- Cornerstone Christian</p> <p>20 Retreat Center. That's in Tarpley, Texas.</p> <p>21 Q What did you do there?</p> <p>22 A Grounds maintenance on 200 acres for a retreat</p> <p>23 center. I also worked at Lowes. I made the</p> <p>24 transition from Omaha to Texas as I transferred as</p> <p>25 an associate out in the lawn and garden. I worked</p>	<p>1 chipper all day in extreme heat. Unless it gets</p> <p>2 over, I think it's 104, we continue to work.</p> <p>3 Q Is that 104 degrees, or 104 heat index?</p> <p>4 A Just the degrees. Yeah, I think it was 106 is --</p> <p>5 If my memory serves me right, it was like 106 was</p> <p>6 the only time we ever called a day early, but we</p> <p>7 still worked in the morning.</p> <p>8 Q Tell me again when you began to work for the Union</p> <p>9 Pacific Railroad.</p> <p>10 A 2010, December 7 was my hire date.</p> <p>11 Q Where did you go to work for the UP?</p> <p>12 A Utah.</p> <p>13 Q And at what position?</p> <p>14 A Signal helper.</p> <p>15 Q And did you remain in the Signal Department?</p> <p>16 A I did not.</p> <p>17 Q Why not?</p> <p>18 A Because it's a temporary position. It was a</p> <p>19 five-year agreement.</p> <p>20 Q I'm not sure I understand what I heard you say.</p> <p>21 A They needed help for a -- a -- a national project</p> <p>22 called PTC. Basically, the ability to track</p> <p>23 trains by satellite to prevent collisions.</p> <p>24 Q Right.</p> <p>25 A And they needed extra help. Some railroads</p>
Page 11	Page 13
<p>1 my way up to team lead in Omaha, and then when I</p> <p>2 transferred down to Texas I was just a regular</p> <p>3 associate outside.</p> <p>4 Q And by an associate at Lowes you mean a -- if I</p> <p>5 were to go in to Lowes and I would run into a</p> <p>6 salesperson on the floor, is that -- was that what</p> <p>7 a person like you would do?</p> <p>8 A Sales associate, yes, sir. Customer service. Not</p> <p>9 in the customer service area, but out in the lawn</p> <p>10 and garden.</p> <p>11 Q All right. In any of those jobs had you received</p> <p>12 any formal training regarding heat injury</p> <p>13 prevention, recognition or treatment?</p> <p>14 A Can you repeat the question, please?</p> <p>15 Q Sure. In any of the jobs that you've told us</p> <p>16 about, did you ever receive any formal training</p> <p>17 from any of those companies for which you worked</p> <p>18 regarding heat injury prevention, recognition or</p> <p>19 treatment?</p> <p>20 A I don't remember. I know some stuff, but I don't</p> <p>21 remember if I had the formal training or whatnot,</p> <p>22 but we had systems in place to deal with</p> <p>23 heat-related stress.</p> <p>24 Q At what company?</p> <p>25 A Terry Hughes. I'm literally dragging trees to a</p>	<p>1 contracted it and some hired some on directly, and</p> <p>2 was I was one of the people hired on directly</p> <p>3 under the -- under the understanding that it's a</p> <p>4 five-year contract, that it's temporary work. If</p> <p>5 you look at my status, when I was hired it was</p> <p>6 temporary.</p> <p>7 Q I see. All right. And how long did you do that?</p> <p>8 A Rounding the base to four years, I want to say. I</p> <p>9 don't know if that's exactly accurate, but at</p> <p>10 least three years.</p> <p>11 Q Then what job -- Did you remain a signal helper</p> <p>12 during that period of time?</p> <p>13 A I did. I did, Mr. Cox.</p> <p>14 Q And that's essentially physical labor, right?</p> <p>15 A It is.</p> <p>16 Q What other jobs have you had for the Union Pacific</p> <p>17 since 2010?</p> <p>18 A So I was a signal helper. Then I was a trackman</p> <p>19 when I transferred over to the Maintenance</p> <p>20 Department. Within that couple months of doing</p> <p>21 section work I also retained a qualification for a</p> <p>22 grapple truck.</p> <p>23 Q For a what?</p> <p>24 A A grapple truck. It's like a -- Some people call</p> <p>25 it a boom truck. A grapple truck would probably</p>

1 describe it better. It's just a -- basically, an  
2 automated arm. Pick up stuff, ties, rail, put  
3 ties in in a section setting.

4 So going forward, after I got those  
5 rights I went back to a trackman, but out on the  
6 system gangs because it's a -- a different  
7 division, different deal. So -- So trackman, got  
8 my trackman rights. And then from there I bid a  
9 assistant foreman position.

10 Q When did you first bid an assistant foreman  
11 position?

12 A I would say that that was August of 2014. Almost  
13 a year prior, if not a whole year prior to the  
14 26th of July. It might have been a year or over a  
15 year.

16 Q When did you first hold a position as an assistant  
17 foreman?

18 A That's when.

19 Q August of 2014. Now, explain to us what it means  
20 to bid for an assistant foreman position.

21 A You go to the bid line and you make sure that you  
22 have all the necessary qualifications, the  
23 training, in order to even bid it. Otherwise, it  
24 will not be accepted. And provided you do have  
25 that, then you just go to UP's website and you put

1 a bid in for the job and -- yeah.

2 Q So what qualification or training was required in  
3 2014 for one to bid on an assistant foreman's job?

4 A Well, it's -- it's kind of a two-part question  
5 there because it's -- you have to qualify within  
6 45 days of getting the job, you know. You have  
7 to -- You have to demonstrate safe behavior and  
8 critical thinking. You can't just walk into it  
9 and do whatever you want. You definitely are  
10 being observed.

11 It's called like 2.13, I believe,  
12 and -- and really -- it's very close, and I can  
13 get that for you, but I wouldn't be able to say  
14 you can quote me on it, but like 2.13 is the  
15 foreman's training. It's like -- I think it's  
16 like a two-hour, two-to-four-hour slide show  
17 presentation going through that you have to take  
18 and answer the questions correctly in order to be  
19 qualified.

20 Now, some guys have been able to bid a  
21 position and still not have that yet, but then  
22 they have to take it. Otherwise, you cannot  
23 retain that position with UP.

24 Q And how is that two-hour slide show taken? Is it  
25 something you take online?

1 A Yes, sir. Usually at work, yeah.

2 Q When you got the bid in August of 2014 for  
3 assistant foreman, had you taken the two-hour  
4 slide show, or did you take it within 45 days of  
5 having had your bid accepted?

6 A I don't remember.

7 Q All right. What other training have you received  
8 regarding how to be a assistant foreman?

9 A In regards to an assistant foreman, you have the  
10 computer-based training and then at our what they  
11 call startups or our annual meetings, we all take  
12 tests and they are -- they're instructor led and  
13 there -- there is no -- you know, you -- you need  
14 to -- it's individual to you. You need to pass  
15 it, but we have in each category of, I guess,  
16 critical red zone areas, we have tests that we  
17 take to see if you can be qualified, and EIC is  
18 one of them.

19 To be the employee in charge you have  
20 to pass a series of tests in each category of  
21 railroading, if I can word it like that. You  
22 know, lookout protection, on-track safety,  
23 flagging protection in the event there's an  
24 emergency and a train -- you know, how to flag  
25 them down properly. So you have that training.

1 And then -- I'm not -- It's above my  
2 pay grade to say what the standard is for a  
3 manager or an RSA, but I did have a lot of  
4 constructive criticism, what they call coaching  
5 out there, but not in the terms of punishment, nor  
6 did I exhibit unsafe behavior.

7 It's just that they are constantly  
8 checking in with you and -- and asking okay, how  
9 are you doing, what are you doing, is there -- And  
10 what I really like about the coaching is they ask  
11 for my input, what can we do differently, you  
12 know. And so it's a very open conversation  
13 that -- that really actually is, to me, even more  
14 valuable than any of the -- the -- I guess the  
15 book training, if you would.

16 Q All right. The CBT training you talked about, the  
17 computer-based training, is that the two-hour  
18 slide show that you talked about?

19 A It's a part of it. It's a part of it.

20 Q And what training at the startups? Is that a  
21 conversation or a safety briefing or -- When you  
22 say that you received some training at startups,  
23 I'm not clear what that means.

24 A Okay. Like I said, it's an annual meeting, and  
25 it's where they bring together guys in our



Page 18

department, say a couple gangs, in like a hotel in the conference room. And one day will be, you know, what -- what our -- what our mission as a company is, we'll talk about that. That will be our opening day.

And then depending upon what group you are, and kind of what -- tailor made to what you need is how your day's going to go the next three days. Like I said, like, for instance, foreman's training, it's not -- it's not training for someone who's not a foreman, right. So you'll get different computer-based training if you're not a foreman.

So during those startups they have stuff that is mandatory for everybody, and that's like going into polluting waterways, asbestos, random stuff like that that is not only law, it's ethical. You know, it's kind of ethics training, you know, as far as what's good business practice out there on the tracks.

Q The employee in charge training, that's for everyone, isn't it, on the gang in case they are designated as the employee in charge when a foreman or assistant foreman is leading the gang?

A I'm sorry. Say that again.

Page 19

Q Who receives the employee in charge training?

A When we're in our startups everybody takes it, but not everybody passes.

Q Okay.

A Because it's just good to have that -- that reinforcement. It's good to come in contact with that information, you know.

Q When did you first -- How often have you worked in the position of assistant foreman since August of 2010? I'm sorry. August of 2014 I think you told me. What was your assistant foreman date?

A My assistant foreman date was August of 2014, and I held that position without incident until -- it's going to be approximate, but pretty accurate, September of 2015.

Q And you said you held that position without incident until September of 2015. Was that on Gang 8501?

A No, sir.

Q When did you leave -- When did you join -- You know what I mean by Gang 8501? That's the gang --

A I do, sir. I'm on the same page as you.

Q When did you join Gang 8501?

A Sometime in July.

Q July --

Page 20

A I don't remember the exact date.

Q July of '15?

A Yes, sir.

Q All right. And obviously, it was before July 26, 2015. You just don't remember what day in July you joined 8501?

A Yeah, I don't remember the exact date. I mean, I was only there that week and the week of the incident, and I was fairly new to the gang. Not fairly. I was new to the gang, yes.

Q So I'm clear, you had been on 8501. Give me an estimate of how many days before July 26. When you say week of, that kind of confuses me. I need to know your best estimate, best memory.

A I was only there for two days because I combed through the events that happened, and that happened over two days, so. The 26th was the incident?

Q That's the day that Guillermo was put in Bobby Herrera's van.

A Okay. Then the -- Yeah, the day prior would have been my first day, the 25th, yeah.

Q And your first day on 8501 you -- what job were you assigned?

A Assistant foreman.

Page 21

Q And is that the assistant foreman of the quality control or Cleanup Gang, as it's called?

A Yes, sir.

Q Mr. Nicholson, I'm handing you the originals of the exhibits that we've taken so far, and I'm going to ask you to look at -- Do you see how they're tabbed? If you could open that up.

If you could look at Exhibit 4. And do you recognize this as a job briefing 8501 work group form? Are you familiar with this form?

A I am familiar with this form, sir.

Q If you go to the middle, you see that it designates the various foremen; Hugo Calvillo, Adam Taylor, Sugar, Charles Turner. You see where I am?

A I do. I do.

Q And then on Number 5 it's got John Vegas, and John Vegas' name is scratched out and the word Scott written in under quality.

A Um-hum.

Q So that's the Quality Control Gang?

A Yes, sir.

Q And can you explain, or do you -- if you know, why were you substituted for John Vegas on the Quality Control Gang?

Page 22	Page 24
<p>1 A I don't know.</p> <p>2 Q Was John Vegas there?</p> <p>3 A He was.</p> <p>4 Q Was he no longer the foreman, or was he the</p> <p>5 foreman and you're the assistant foreman?</p> <p>6 A He's -- He's -- He's always an assistant foreman.</p> <p>7 Q All right. Was he an assistant foreman on the</p> <p>8 Quality or -- and Control Gang, the Cleanup Gang</p> <p>9 that day --</p> <p>10 A No.</p> <p>11 Q -- or were you?</p> <p>12 A No, I was.</p> <p>13 Q Is this the first day, July 25th, is that the</p> <p>14 first day you had worked on Gang 8501? I know for</p> <p>15 this -- I'm asking is it possible sometime in '14</p> <p>16 or '15 that you had worked on 8501?</p> <p>17 A No, sir.</p> <p>18 Q First time on 8501.</p> <p>19 A Yeah. I came from a -- a Curve Gang.</p> <p>20 Q Okay. Now, let's -- let's talk a little bit</p> <p>21 about -- 8501, the gang you were working on on</p> <p>22 July 26, is a Steel Gang.</p> <p>23 A Um-hum.</p> <p>24 Q Is that the correct term?</p> <p>25 A Yes, sir.</p>	<p>1 me? And I want to know before -- Well, that's a</p> <p>2 good point. Let me lay a little more foundation</p> <p>3 here.</p> <p>4 You told me that you had worked -- or</p> <p>5 that you held the position of assistant foreman</p> <p>6 without incident until September of 2015. Was</p> <p>7 that on 8501?</p> <p>8 A I want to make a correction there. I guess,</p> <p>9 Guillermo's deal would have been an incident, but</p> <p>10 what I meant by that was is that I didn't have</p> <p>11 anything else, as far as anybody in my group for</p> <p>12 that year with any issues. That's kind of -- I</p> <p>13 guess I worded that wrong now that you repeat it.</p> <p>14 Q Okay. Clarify that for me.</p> <p>15 A Yes. Without incident means I did not have any</p> <p>16 injuries or anything within my work group for that</p> <p>17 year that I retained an assistant foreman</p> <p>18 position.</p> <p>19 Guillermo would have been the first.</p> <p>20 I used the wrong word when I say incident. There</p> <p>21 was nothing formally on my record of having any</p> <p>22 issues with my performance.</p> <p>23 Q Okay. You had received that coaching that you</p> <p>24 described earlier.</p> <p>25 A Everybody does.</p>
Page 23	Page 25
<p>1 MR. GARLAND: Mr. Nicholson, let me</p> <p>2 just advise you don't um-hum or ugh-ugh. Answer</p> <p>3 audibly yes, no.</p> <p>4 THE WITNESS: Okay.</p> <p>5 BY MR. COX:</p> <p>6 Q And just to abbreviate this because the jury will</p> <p>7 have a lot of sense of this, a Steel Gang is a</p> <p>8 gang that lays rail.</p> <p>9 A Yes.</p> <p>10 Q All right. A Curve Gang does what?</p> <p>11 A It lays rail on curves.</p> <p>12 Q And on the work on the Curve Gang had you worked</p> <p>13 on wood ties?</p> <p>14 A Yes.</p> <p>15 Q Had you worked on concrete ties before going to</p> <p>16 work on Gang 8501 on July 25th?</p> <p>17 A No.</p> <p>18 Q So the first time -- So I'm clear, the first time</p> <p>19 you had ever worked on a Steel Gang working on</p> <p>20 concrete ties was on July 25th, 2015.</p> <p>21 A Yes, you would be correct, Mr. Cox.</p> <p>22 Q All right. Let's talk a little bit about what</p> <p>23 education or training you've received from the</p> <p>24 Union Pacific Railroad regarding prevention of</p> <p>25 heat-related illness. Can you describe that for</p>	<p>1 Q Now, from -- am I correct that you worked on the</p> <p>2 Steel Gang 8501 from July 25, 2015 until sometime</p> <p>3 in September of 2015? Because I had asked you how</p> <p>4 long did you work on 8501 as assistant foreman,</p> <p>5 and you said you held that position without</p> <p>6 incident until September of '15.</p> <p>7 A No, I did not. What I said to you was is that I</p> <p>8 was an assistant foreman from August of 2014 to</p> <p>9 about September of 2015 aside from, and this is</p> <p>10 the correction I made just a moment ago. Aside</p> <p>11 from the incident, and I used the wrong word when</p> <p>12 I said incident, aside from the incident with</p> <p>13 Guillermo, now that I'm rectifying it, I didn't</p> <p>14 have any complications with anyone.</p> <p>15 Q Okay.</p> <p>16 A As far as any injuries within my work group.</p> <p>17 Q Forgive me. I may not have been clear. I just</p> <p>18 want to know for what period of time you worked on</p> <p>19 8501 as a -- as an assistant foreman.</p> <p>20 A Okay, yeah. So that -- that would be what you</p> <p>21 initially said. And that is that I was there from</p> <p>22 July 25th, I think we narrowed it down, yeah, to</p> <p>23 September, and I don't have an actual day that I</p> <p>24 left the gang. I do not remember.</p> <p>25 I just -- I remember -- I have a vague</p>

1 thought I was like October or -- I don't know if  
2 I'll be here in October or not, and I know I was  
3 gone long before then. Just something stuck out  
4 in my mind, you know, there was like an event I  
5 wanted to go to in the area or something. So I  
6 know I was gone before then. It's literally been  
7 over a year since then.

8 Q All right. And why did you leave the assistant  
9 foreman position on 8501 in September of '15?

10 A I would say curiosity. I wanted to learn more  
11 crafts within the craft I'm in.

12 You know, you get to observe as an  
13 assistant foreman. You know, your job is to keep  
14 everybody safe and to provide OTS and radio  
15 communication, but you don't get the hands-on in  
16 some aspects. And so I wanted to -- I wanted to  
17 do some welding, but it just didn't work out  
18 because I bid a welder helper position and  
19 somebody else had an interruption in their  
20 service, so I was bumped before I could even get  
21 the position.

22 Q All right. To what job -- Strike that. Did you  
23 move in September of '15 to another job on the UP?

24 A No.

25 Q Why not?

1 A Because somebody else had already bumped me from  
2 the position that I was supposed to retain. And  
3 so what I did was is once that happened, of course  
4 I want to work and -- and I'm comfortable as an  
5 assistant foreman. So I stayed there as an  
6 assistant foreman for like -- well, once I was  
7 bumped, I left. That's -- That's what I did.

8 But I still, you know what I mean,  
9 like I got bumped what would have been my first  
10 day to show up at that welder helper job. And so  
11 in -- the standard is when you are in this Union  
12 agreement is that you have 14 days to place  
13 yourself after you are bumped.

14 That being said, I can catch a bid, I  
15 could do that, within the next couple weeks to  
16 come, hopefully, but if I don't, I have 14 days to  
17 go to my bump list, review my bump list, and then  
18 go ahead and bump in.

19 I ended up catching a bid. Yeah, I  
20 didn't even have to bump in, which no one likes to  
21 bump in because essentially you're removing  
22 somebody from, you know, from their position. And  
23 so I caught a bid, and it was in Wisconsin, very  
24 nearby. I'm going to -- I always mispronounce it  
25 because it's French, but Eau Claire or Eau Claire

1 or something to that nature, but that -- I bid  
2 a -- a regulator.

3 And that draws into we -- we got on a  
4 tangent, and that was my last rights that I hold.  
5 You asked what, you know, what else have I done  
6 here for the railroad. That was the last one,  
7 just to sum up that section of the deposition we  
8 were talking about. That's all.

9 So -- So going back through that,  
10 that's going to be a trackman, that's going to be  
11 a -- well, a signal helper, a trackman, a grapple  
12 truck driver, assistant foreman, and what they  
13 reference that machine, the regulator, a TMO date,  
14 a machine operator.

15 That -- And that's when it all, like  
16 you had said about the furloughs, that's when they  
17 shut down, they had a reduction, and that gang was  
18 abolished, and that's when I went into furlough.

19 Q Okay. Thank you for all of that explanation, but  
20 what I'm interested in is when you left 8501 in  
21 September of 2015 were you bumped?

22 A When I left the 8501? Yeah, I absolutely was.

23 Q Okay. You told me you left because of curiosity,  
24 but what happened was someone bumped you.

25 A You know, I guess I dug a little deeper than I

1 needed to into your question. I thought you were  
2 asking me why I would bid another job. The reason  
3 why -- but what you're asking me, Mr. Cox, is why  
4 I left the 8501?

5 Q Yes, sir.

6 A Okay. Yeah, because -- because I was bumped.

7 Q Okay. Now, I'm going to summarize that a little  
8 bit, in the interest of time, because I think by  
9 now the jury will understand it, but based on the  
10 seniority roster in the Union Pacific Railroad,  
11 when a person gets a date on that seniority roster  
12 he can bump a person with less seniority out of a  
13 position, and that person that is bumped then has  
14 14 days within which to bump into a new position  
15 if his seniority permits. Is that a fair summary  
16 of it?

17 A There was something in the beginning of that  
18 statement I'm going to need you to repeat.

19 Q Okay. Well, why don't you explain it to us then,  
20 how bumping and bidding works on the UP.

21 A I need to know the question.

22 Q Sure. How does bumping and bidding work on the  
23 UP? You said you were bumped out of the assistant  
24 foreman job on 8501 in September of '15. You had  
25 14 days within which to place yourself, bid on



Page 30

1 another job. Explain that to the jury.

2 A Okay. Okay. I did already summarize it, but I  
3 just want to make sure that I'm addressing your  
4 question.

5 Now that it's vague you're going to  
6 open it up so that I can explain it the way that  
7 you just asked the question. That is, how does  
8 bumping and bidding work. Before you had asked me  
9 a series of questions leading up to what I was  
10 going to answer, and that's why I asked you to  
11 repeat it because the first question was a lot  
12 different.

13 How bumping and bidding works is Union  
14 Pacific has a bid line that we have to sign in to,  
15 and we can review what jobs, provided we hold  
16 the -- the -- even the -- the rights to work in  
17 that area, because we have different agreements.  
18 Like where I'm at right now, that's what they call  
19 the old C&W agreement. And I'm sorry to go on a  
20 tangent, but you asked for an explanation of  
21 bumping and bidding.

22 Q Yeah. Let -- I don't mean to interrupt you. I  
23 think the jury will have an understand of the  
24 bidding and bumping.

25 I just wanted to -- Let me just

Page 31

1 summarize so I'm clear I understand. In September  
2 of 2015 a person with more seniority as an  
3 assistant foreman bumped you off the assistant  
4 foreman position on 8501.

5 A No.

6 Q No. How is it that you were bumped off of the  
7 8501?

8 A I'm not sure how to tell you differently. I've  
9 already told you. The -- The -- I -- Like I said,  
10 I had a curiosity about welding. So I actually  
11 bid a welder helper position on the same gang, on  
12 the 8501. Do you understand?

13 Q I do now.

14 A Okay. When I was supposed to relinquish my job as  
15 an assistant foreman to be a welder helper, there  
16 was already another welder within the gang that  
17 had -- either his job had either been abolished, I  
18 don't know the story, or that he got bumped  
19 himself.

20 So he bumped me. His 14-day window  
21 was open, so he bumped me the first day I was even  
22 supposed to step into my role as a welder helper,  
23 opening my 14-day window.

24 Q Okay.

25 A Is that clear?

Page 32

1 Q It is now, but I'm not sure why you relinquished  
2 your right as an assistant foreman. I understand  
3 it was to bump in as a -- attempt to bump in as a  
4 welder helper. If you couldn't bump in as a  
5 welder helper, have you already relinquished your  
6 assistant foreman job and not able to go back to  
7 that job?

8 A If you've already relinquished your rights as an  
9 assistant foreman --

10 Q Right.

11 A -- you cannot go back to an assistant foreman?

12 Q That's what I'm asking. Here's my question. Let  
13 me make it a little more simple.

14 When you learned that the welder  
15 helper job had been taken by someone with more  
16 seniority, did you go back or attempt to go back  
17 and as assistant foreman?

18 A No. No. I -- I had that 14-day window to  
19 exercise my seniority elsewhere, which never  
20 happened. I ended up catching a bid on a -- on a  
21 regulator.

22 Q Okay.

23 A Um-hum. Sorry about that.

24 Q As a result of the injury to Guillermo Herrera on  
25 August 20 -- on July 26, 2015, did you -- did

Page 33

1 anyone in management or a supervisory role talk  
2 with you about what had happened in the day or  
3 days following?

4 A About the in particular incident? No. I --

5 MR. SCHMITT: You've answered the  
6 question, yeah.

7 MR. COX: No, but let's -- I guess  
8 he'll decide when he's through with his answer.

9 MR. SCHMITT: Well, I mean, for  
10 purposes of the deposition, I mean, you just need  
11 to answer the questions that are there.

12 THE WITNESS: No, they didn't.

13 MR. SCHMITT: If he wants further  
14 explanation, then he'll ask.

15 BY MR. COX:

16 Q We know you talked with Justin Dietrich and give  
17 him a --

18 A That's where I was going with it.

19 Q Okay. Did you ever talk with Mr. Rolow,  
20 Mr. Diaz, any other foreman about what had  
21 happened, or why it had happened, or what could be  
22 done to prevent it from happening again? Did  
23 anyone, any supervisor ever talk with you about  
24 that?

25 A No.

1 Q Were you given any coaching or any discipline or  
2 any -- anything as a result of the injury to  
3 Guillermo Herrera?

4 A No, I wasn't.

5 Q Other than Justin Dietrich, did any of those  
6 supervisors on that gang or directors of that gang  
7 ever ask you what had happened --

8 A No.

9 Q -- that day?

10 A No, they did not, which I didn't think that was --  
11 Okay.

12 Q Tell me what education or training regarding the  
13 prevention of heat-related illness you received  
14 from the Union Pacific Railroad before July 26,  
15 2015.

16 You understand that I can obtain from  
17 the UP your training history. I haven't done that  
18 yet, but I'm just interested in your training  
19 history on the UP before July 26, 2015. What  
20 education or training did you receive from the UP  
21 regarding the prevention of heat-related illness?

22 A Going back to 2010, every summer, and with the  
23 Signal Department it's even more intimate, we have  
24 a safety meeting all day long for each day of the  
25 month. You know -- or not each day of the month.

1 That's completely worded wrong.

2 For one day out of the month we put  
3 aside for safety. We meet in a hotel room and we  
4 would have, you know, safety -- you know, we would  
5 actually read what's going on within the company  
6 and we have an actual safety briefing sent out to  
7 us from -- probably our directors or above, and --  
8 but that drawing -- that draws into your question.

9 The QS7, the heat stress awareness,  
10 they call it the summer spike. They're looking  
11 out for these heat-related injuries to prevent  
12 them. And I have -- I have taken and signed off  
13 on that training ever since 2010. It's a  
14 requirement. They would come find me out on the  
15 tracks and I would not even be allowed to be out  
16 there, let alone in an assistant foreman position.

17 So that QS7 was taken annually since  
18 2010, and if you can obtain those records, you  
19 know, then -- yeah, it's there. I've taken that  
20 every year.

21 And as you indicated, I was a signal  
22 helper doing manual labor, so it was even more  
23 important that I pay attention because I literally  
24 was digging trenches all day knee-deep in extreme  
25 temperatures.

1 So I was making sure that I was still  
2 sweating, taking my water breaks accordingly, make  
3 sure that I've got the, you know, you know, one an  
4 hour, and depending upon the index how much time I  
5 take and stuff like that.

6 And for me, a big hitter for me is I  
7 make sure my electrolytes are up. That's huge.  
8 But no, I've -- I've sweated so much it's not even  
9 funny, but I'm totally on a tangent here.

10 The question at hand is my training.  
11 So I've had that summer spike, stand down, signed  
12 off on, since 2010. And then as far as  
13 heat-related injuries, we're just always talking  
14 about it, like always talking about the heat, what  
15 we're going to do, buddy systems. Knowing your  
16 own limitations is a huge one. That's --  
17 That's -- I mean, at the end of the day that's --  
18 that's -- that's the one that I wish -- I wish  
19 there was some way around that, you know, that we  
20 could know better, but there's not, you know. I  
21 mean, you got to know your own limitations, you  
22 know.

23 Someone can appear just fine on the  
24 outside and not be, you know, so. And I think  
25 there's a lot of different factors that come into

1 that, you know. I mean, how good of shape you're  
2 in, if you're sleeping enough, what you're eating,  
3 if you're drinking the night before. We talk a  
4 lot about hydration. Hydration doesn't start in  
5 the morning when you get to the job. It's a part  
6 of it, but it starts the night before.

7 So your whole -- your whole job is  
8 important on and off the railroad to prevent  
9 injuries. You have to be very well hydrated to be  
10 out there, and especially in those extremes. And  
11 I think the railroad's done a good job of  
12 educating not only me, but everyone else on that.

13 Q All right. Now, a couple of things that you said  
14 were interesting to me. You said a big hitter for  
15 you is to keep your electrolytes up. What do you  
16 mean by that?

17 A Drink Gatorade. It has electrolytes.

18 Q Okay. And you referenced a buddy system. What is  
19 a buddy system?

20 A Is to be hyperaware of your surroundings.  
21 Mitigate the risk of unsafe behavior. Make it  
22 less severe.

23 And so, you know, if you come there  
24 and you're only thinking about what your job is  
25 and you're not -- you're not looking over there

Page 38

1 and seeing that, you know, John Doe isn't sweating  
2 and he looks tired and he looks like -- lethargic,  
3 to go and engage him and make sure that he's okay,  
4 and really make sure. Not just, you know, hey,  
5 man, you going to make it. You need to keep going  
6 like really -- really sit there and have a  
7 one-on-one with him, you know what I mean.

8 It's almost like if someone had a  
9 concussion, you want to ask them their name, how  
10 many fingers am I holding up, check back in with  
11 them. Make sure that their memory's working  
12 properly. Make sure that -- that there's some  
13 cognition there, you know.

14 And so that's -- the buddy system is  
15 to go above -- not even above and beyond, because  
16 that's our standard, but to -- out in the world,  
17 you know, you don't walk down the street asking  
18 people if the heat's getting to them, you know.  
19 Out on the tracks we do. That's the buddy system  
20 in a nutshell.

21 Q You referenced sweating. What's the significance  
22 to you, based on that training, whether one is  
23 sweating or not?

24 A It's an indication that you're still hydrated,  
25 that you're not losing all your fluids.

Page 39

1 Q Is it an indication at all as to whether or not a  
2 person is suffering or could be suffering a  
3 heat-related injury?

4 A That's a medical question. I mean, that's not --

5 Q Okay. If you could open up the exhibit book again  
6 to Exhibit 13. You referenced it as QS7, the  
7 training program. It's actually, I think, QS97.  
8 Do you see that there?

9 A Yeah, there's a 9 in there. My apologies.

10 Q And this document says this information is  
11 provided to assist supervisors in refocusing our  
12 safety efforts. Do you see that?

13 A Yes, sir.

14 Q And the contents are the Leader's Guide. Now,  
15 have you ever seen this document, this Leader's  
16 Guide. Take a look at it, flip through it if you  
17 need to.

18 A I would say yes, but I would also say if it's  
19 slightly altered at all I wouldn't know it being  
20 there's so much criteria here.

21 Q All right. Then you said something about -- Well,  
22 strike that. Let's talk a little bit about that.

23 You see on the second page in the middle --

24 A I'm sorry. I jumped all over. Hold on. I'm  
25 sorry. Okay. Is it highlighted?

Page 40

1 Q Yeah. It says in the past five years 30  
2 engineering employees have suffered heat-related  
3 incidents. Sixteen of these were serious enough  
4 to be reportable, and 11 resulted in lost time.

5 Do you have any knowledge, other than  
6 Guillermo Herrera, of anyone else suffering a  
7 heat-related injury on Gang 8501 while you were  
8 there?

9 A I've had -- I've heard hearsay that -- that people  
10 were dealing with the heat in different ways, but  
11 I wasn't on the gang. Like you said, it was only  
12 two days. So I don't really -- I don't know.  
13 Like I said, all I've heard is hearsay. So I'm  
14 not really sure what did or didn't happen, sir.

15 Q Did you ever hear that Charles Turner had had a  
16 problem, assistant foreman or foreman, I'm not  
17 sure what his job was, Charles Turner had had a --  
18 a problem with the heat a day or two before  
19 Guillermo Herrera?

20 A I heard guys talking about it, but it didn't come  
21 from any official source, nor was of it like  
22 briefed with me that it was something that  
23 happened. I heard about it through the gang, but  
24 that's about it.

25 Q Okay. So that was -- If we look at Exhibit 4, the

Page 41

1 job briefing workweek, we identified Charles  
2 Turner as a foreman of the Eight Man.

3 When -- If and when Mr. Turner went  
4 down as a result of a heat injury, or left the job  
5 because of a heat injury, do you know if that was  
6 the subject of a safety standdown the day it  
7 happened or the next day? Was it mentioned at the  
8 job briefing the next day, do you know?

9 A I was not there, no, and I didn't hear anything  
10 about what you just asked me, the -- was it the  
11 subject of a standdown or was it -- I was not  
12 there. Like I said, I heard hearsay. I don't  
13 even know when it happened, to be honest with you.  
14 I just heard hearsay of it when I was -- when I  
15 was there for that couple months.

16 Q Now, I want to look at page 6.

17 A Okay. Just a second.

18 MR. GARLAND: It's still in that  
19 exhibit.

20 THE WITNESS: He said he wanted to  
21 look at page 6.

22 BY MR. COX:

23 Q Page 6 of that exhibit. Sorry.

24 A Okay. Yeah, sorry. Got tabs going here that are  
25 pretty extensive. Okay.

Q You see under work procedures, the second paragraph. Also, remember that in hot weather even normal tasks can cause an individual to become overheated. Be sure to know and be on the lookout for the signs and symptoms of heat stress from our annual training and, if possible, implement a buddy system during the hot weather. This means having two employees each responsible for watching the other for signs of heat stress, reminding each other to drink water, suggesting a task rotation or taking a break.

Is that your understanding of the buddy system that the UP attempts to implement?

A Yes.

Q I want to go to page 8 in that exhibit. Were you ever advised of what injury, what heat-related injury or illness Guillermo Herrera was diagnosed with at the hospital on July 26?

A Yeah. I just -- I -- Like I said, through the guys in the gang I asked how's he's doing, and they just said he had heat exhaustion. That's it.

Q Okay. On page 8 in Exhibit 13, emergency response. You see that chapter title?

A I do.

Q It says as mentioned before, it is important that

everyone knows the signs and symptoms of heat stress and knows what to do should a coworker experience those signs or symptoms.

A Um-hum.

Q If we recognize the early signs of heat strokes in ourselves or one of our coworkers, the remedy may be as simple as taking a break in the shade, if any, or an air-conditioned vehicle, and drinking water to allow our bodies to cool. If the heat stress appears to be more severe, don't hesitate in seeking immediate medical attention.

Did I read that right?

A You did, sir, yes.

Q And then it describes the symptoms and signs of heat exhaustion.

On July 26, 2015, and we'll get into this in detail in a minute, what symptoms did you observe in Guillermo Herrera any time that day before calling Bobby Herrera in Guillermo Herrera? What symptoms or observations did you make of him?

A You know, honestly, he was okay because he wouldn't have been on the tracks if he wasn't.

Q What do you mean by that?

A Well, what I mean is when I was observing him he appeared to be okay.

Q Okay. What about when he took the break in the truck -- Hang on a second.

Let me go over with you a few things here. Sometime that morning, I believe it's about 10:30, Mr. Herrera sat in a truck for 30 to 45 minutes, and he described himself as feeling dizzy, weak, and having trouble breathing. And he was in the mechanic's truck for about a half an hour or so. Were you aware of that?

A Oh, yeah.

Q And what -- did -- did you ever doubt Mr. Herrera's stated need to sit in the truck to cool down?

A No.

Q Did you make any observations of him as to why he would need to do that?

A Can you please -- I don't like the way that's worded.

Q Did you have any reason to believe that he did not need to be in a truck to cool down?

A Did I have any reason to believe he did not have a reason to be in the truck. No. It was at his own -- That's what he wanted to do.

What I have to do with it is nothing.

It's totally -- He wanted to be in the truck, he's

in the truck. I mean, that's -- you know yourself better than anybody.

Q Okay. And did you permit him to go into the truck?

A Absolutely.

Q Did you tell Bobby Seely that Mr. Herrera wasn't feeling good and needed a break?

A I did, but what I did was is -- Okay. Bobby Seely came through, and I just wanted to say -- you know, I said he tells me he's fine, he's absolutely fine, he looks fine, but he did need a break. I just -- just so that this isn't just solely -- I wouldn't say on me because it isn't about blame. It's about really -- being compassionate and making sure he's okay.

I said, you know, you being the safety captain, you having the extra PPE, I think it's wise you go have a briefing with him, and they did. And he did take PPE from him. Also, reinforcing, I mean, he's -- that's showing that, you know, he's not so dizzy that he can't function, that he can't make decisions. I mean, he had a briefing with him, you know.

I mean, I don't know -- like I said

I'm not -- I'm not -- I'm -- I'm not the judge of



1 that. I just listen to what -- what it is Herr --  
2 what Guillermo is telling me, you know, so -- I  
3 think I've answered the question.

4 Q All right. My question was did you tell Bobby  
5 Seely that Mr. Herrera wasn't feeling good and  
6 needed a break?

7 A No. What I told Bobby Seely was is that he was  
8 not -- he said he was lightheaded earlier and then  
9 he took a break, and then he came back on his own  
10 will and he's telling me he's okay. And he's been  
11 telling me he's okay ever since it happened. And  
12 that is what I told Bobby because I do not want  
13 anybody out there who's going to get hurt. It's  
14 just not worth it.

15 Q In any of the training that you've ever received  
16 from the Union Pacific Railroad, have you ever  
17 been told that the last person to ask how they're  
18 doing is a person that is in the throws of a heat  
19 illness?

20 A Excuse me?

21 Q Have you ever been told by anybody on the Union  
22 Pacific in any of this training that if a person  
23 is complaining of heat problems; dizziness, I need  
24 to take a break, that you cannot rely on what they  
25 tell you if they are in the throws of a heat

1 illness? You cannot -- They cannot -- Because  
2 they've become confused and lose mental function,  
3 they cannot be relied upon to describe to another  
4 person how they're doing. Have you ever received  
5 any training like that?

6 A I know what you mean, but it's a little bit more  
7 complex than that. The training I received said  
8 they have to be exhibiting the signs.

9 He clearly was not exhibiting the  
10 signs. He was taking all the precautionary  
11 measures to stay hydrated. He was drinking lots  
12 of water, lots of Gatorade. He was able to  
13 have -- hold a conversation just fine, joking with  
14 the guys.

15 It wasn't -- There was no indication  
16 that he didn't have awareness that he was  
17 suffering from some kind of heat dementia or  
18 something or -- I don't know what -- where you're  
19 going with that, but that's -- that's what --  
20 that's how I'm going to leave that answer,  
21 Mr. Cox.

22 Q And that's your perception at the time about 10:30  
23 or so when he was in the mechanic's truck; is that  
24 right, that point?

25 A Okay. The timeline, I don't know if that's

1 exactly right. So that's like when were talking  
2 about the questions here and you asked me, you  
3 know, and now I've just said it was 10:30, which I  
4 haven't even gone through my head what exact time  
5 it was. I don't know that it was 10:30. It might  
6 have been a little bit later in the day, but he  
7 was in there for a couple hours, not 30 to 45  
8 minutes. That's not -- No. And he came back on  
9 his own will.

10 Q All right. So how would you describe the  
11 condition of a person, if your memory is accurate  
12 that he was in the truck for two hours, how would  
13 you describe the condition of a person that needed  
14 to be in an air-conditioned mechanic's truck for  
15 two hours?

16 In other words, why would one have to  
17 be in an air-conditioned truck for two hours,  
18 assuming your memory of two hours is correct?

19 A Because that is -- It's -- It's right here, I just  
20 read it and -- Let's see. I mean, the -- the  
21 deal, what it says is let -- let someone have  
22 access to a truck and the air conditioner, you  
23 know what I mean, and -- So why would he need to  
24 be in there two hours? Maybe he felt fine. Maybe  
25 it took him that long to drink that much water and

1 Gatorade where he felt he could come back.

2 I personally got in the truck with him  
3 once me and the couple guys I was working with  
4 worked up close to where he was at and, I mean, I  
5 gave him my personal radio and he had access to a  
6 working radio to make sure that -- that, you know,  
7 he can say something if he had a problem, but I  
8 got in the truck with him and we had a  
9 conversation, so yeah.

10 Q In that conversation -- By the way, was the  
11 mechanic Brad present when you were having any  
12 conversation with Mr. Herrera?

13 A He was not.

14 Q Do you know Brad is the mechanic in whose truck  
15 Guillermo Herrera was sitting about 10:30 or 11 in  
16 the morning?

17 A I do.

18 Q Did you say to Mr. Herrera while he was sitting in  
19 the mechanic's truck if you plan on being in the  
20 truck all day, you won't get paid?

21 A Absolutely not. Absolutely not. No. I did not.  
22 And where I want to go with that, as far as how I  
23 look at that, that has definitely been a  
24 miscommunication.

25 I was saying why -- you know, all I



1 said was is it's not -- if you are feeling sick at  
2 all, it's better that you recover from it, you  
3 know, if you have to go back for a day to the  
4 hotel room, instead of missing a whole week's  
5 worth of work, but at no point did I say -- hence,  
6 he was there the whole day getting paid for any  
7 breaks that he needed that we did take officially.

8 So to answer your question, no, but I  
9 can see why -- how that got turned around, but no,  
10 it's -- I never -- I never said anything -- I'm  
11 not the railroad. I'm an employee of the  
12 railroad.

13 Q But you were his assistant foreman.

14 A Yes, but that's -- again, that's above my pay  
15 grade. I don't make those calls. I make the  
16 calls to mitigate the risk of unsafe behavior,  
17 provide on-track protection, and just make sure  
18 that I'm the voice for my guys.

19 Q Did Mr. Herrera return to work after he had been  
20 in the mechanic's truck?

21 A Yes, sir.

22 Q And what work did he return to?

23 A Trading off with the bus driver just placing  
24 biscuits. Biscuits are plastic insulators that go  
25 between what they call the tower of the tie, the

1 concrete tie, and the rail. And they help hug the  
2 rail. You know, sometimes we put a little water  
3 on them.

4 Q Okay. We're going to understand all of that. I'm  
5 just asking you what was he doing.

6 A Well, earlier you were asking me if I had any  
7 experience on concrete, so I felt like I'd kind of  
8 elaborate on it in the process, but he was -- he  
9 was -- he was putting those insulators in and  
10 putting those clips in place so that the machine  
11 could actually do the work.

12 So he wasn't swinging a hammer. He  
13 was just basically setting out material for the  
14 machine to do the actual labor.

15 Q Do you remember after he had returned to work  
16 Mr. Guillermo telling you that he was feeling real  
17 dizzy?

18 A No. I do not remember that. There was one time  
19 in the morning, and that was what led to his  
20 break. Well, first he went to his machine, to get  
21 it right, he went to his machine. And then he  
22 sent word to me via the radio that he was going to  
23 go to the mechanic's truck. So he was already on  
24 break a little bit before the couple hours in the  
25 truck in a shade machine. There's shade on that

1 machine.

2 And at one point I do remember, and I  
3 don't have a timeline, that he was standing in the  
4 shade on the tracks, too, off the track, but when  
5 he came back, I did not hear him complain about  
6 dizziness because I was -- I was hyperaware and I  
7 did not want to see him the way he is now.

8 Q Who called Surfacing foreman Gang Robert or Bobby  
9 Herrera? I'm probably going to refer to him as  
10 Bobby Herrera. Who called Bobby Herrera that day?

11 A I did.

12 Q Why?

13 A To get Guillermo transportation because around  
14 3:30 in the afternoon he said that he wanted to  
15 leave, he didn't feel good.

16 Q And how do you get the time 3:30?

17 A That's my timeline in my head. It was around that  
18 time.

19 Q All right. It's an estimate. We can agree on  
20 that?

21 A Pretty accurate one, yes.

22 Q All right. I mean, how do you document that, or  
23 how are you -- how are you able to say that's  
24 pretty accurate? I'm not trying to --

25 A Just my memory, yeah.

1 Q Mr. Herrera thinks it's about 1 or 1:30.

2 A No.

3 Q Do you have any way to dispute that?

4 A No, there's no way it was 1:30. I could actually,  
5 if you give some time to do some research, it  
6 wasn't 1 or 1:30 that he left. No way.

7 There was a -- a fuel truck that came  
8 through around 2 something. It's my job to  
9 document what goes on during the day. That's how  
10 I remember. And the -- the fuel truck came  
11 through between 2 and 3, and he sat in that truck,  
12 too, for about 15, 20 minutes, maybe longer. 1 or  
13 1:30, that's just not going to add up at all.

14 Q What would you look at to document that?

15 A Witness sworn testimonies, lots of them. There  
16 was -- You know, you got -- you got more  
17 depositions I'm sure. I don't know. If you don't  
18 already know, the people who were there.

19 Q What would you look at? You said you were  
20 responsible for keeping time of events, things  
21 like that. Did you keep a log or a diary, or did  
22 you make any notes about what happened that day?

23 A That day I'm sure -- I'm sure I did. And, I mean,  
24 like I said, I'd have to go back through my  
25 records, I doubt I have it, but I do remember

Page 54

1 everything. I did go over this a little bit in my  
2 mind. Yeah, you know, once he didn't return I was  
3 thinking well, what -- I don't understand, you  
4 know.

5 So I just -- I've played back that day  
6 in my head hundreds of times, you know, thinking  
7 what could I have done differently. And I can't  
8 see what I could have done differently for  
9 Mr. Herrera.

10 Q When I was asking you about what you had done to  
11 prepare for your deposition, have you reviewed any  
12 documents?

13 A No, I have not.

14 Q No statements, no logs, no time rolls, nothing.

15 A No. No. Through and through I have not, sir. I  
16 have not. Like I said, when you said how do you  
17 know, from my memory. I remember.

18 Q Did the UP furnish you anything to review to  
19 assist you in making accurate your testimony here  
20 today? Did they provide you any documents?

21 A No. No. They made it -- They made it clear  
22 what -- what the guidelines are.

23 Q So I'm back to the question of why you called  
24 Robert Herrera, Bobby Herrera. Why did you call  
25 him?

Page 55

1 A Because Guillermo wished to leave.

2 Q And how did you call Mr. Herrera?

3 A On the radio.

4 Q And what about -- what did Guillermo Herrera say  
5 to you?

6 A He just said, you know, I'm not feeling good, my  
7 body feels weird. That's what he told me.

8 Q What else?

9 A That's it. I don't feel good, my body feels  
10 weird, I don't know what's going on. Okay.  
11 That's -- That's the -- the key there to what we  
12 were talking about earlier. That's not what I  
13 needed to hear. If I even thought that he was  
14 trying to -- you know, I need to stay out here  
15 because I'm worried about something else, like he  
16 said pay or something, and I'm like no, you need  
17 to go to home and I'll call somebody, but that  
18 right there was -- he's like I'm feeling weird.  
19 And I was like okay, we'll -- I'll -- we'll -- as  
20 fast as I can I'll get somebody here to get you.

21 Q All right. And did you make any observations of  
22 Guillermo Herrera at that time?

23 A At that time? He was still sweating and he was  
24 just leaned up against the machine. And when I  
25 say leaned up, he was half sitting on it, half

Page 56

1 standing, and his shoulders were slumped forward  
2 just a little bit, slightly. I still have a still  
3 frame.

4 Q And did you form any impressions of his condition  
5 at that time?

6 A Just that he did look exhausted at that time.  
7 When I finally -- When it -- When -- When I seen  
8 him he looked exhausted, you know. That's -- So,  
9 you know, so we handled it accordingly.

10 That's when he -- That's when -- I  
11 wouldn't even -- If I viewed him like that before  
12 he said he wanted to leave, I would have -- I  
13 would have had him out. Like I said, I have a  
14 still frame in my mind, in my memory of him  
15 exactly where he was at. He was on the -- He was  
16 on the side of the track, you know. He wasn't on  
17 the field side. The field side is what we  
18 reference the right-of-way where vehicles drive up  
19 and down. He was actually over on the other side  
20 and he was leaning up against that camp car, as we  
21 call it, which is also another word for clipper,  
22 and -- clipper car, you know, and we also have  
23 a -- a bin that we haul our tools behind that, but  
24 he was in the front.

25 He was in the front of that machine,

Page 57

1 closest to the front of the machine, and he was  
2 just -- he was just like half sitting, half  
3 standing with his shoulders slumped forward, and  
4 he looked like he was thinking, you know, like he  
5 was evaluating his own condition. And of course  
6 he was nervous. He said I feel weird. And I said  
7 well, I'll get you out of here, you know. All  
8 right.

9 Q Now, what was your thought when you say I'll get  
10 you out of here? What was your thought? What  
11 does that mean, get you out of here?

12 A To call somebody. You know, to call Robert, who  
13 is -- who's the nearest available vehicle to get  
14 him to where he needs to go, you know.

15 Q And where did he need to go? Did you form any  
16 opinion in that regard?

17 A I -- Like I -- I didn't really form an opinion  
18 except to say that I knew he wanted to leave. You  
19 know, it's -- it really wasn't up to me where he  
20 goes because, again, you know, I -- from what I  
21 saw there, I just was concerned about getting him  
22 a ride. Where he went, you know, I didn't even  
23 really -- This happened so quickly, Mr. Cox, that  
24 we didn't have like an in-depth conversation,  
25 Mr. Herrera and I.

1 He was sick. He was gone. I didn't  
2 get the chance to get an evaluation, like check in  
3 with him and be like, hey, you know, what do you  
4 want to do. Do you need -- You know, again,  
5 looking for the signs of heat stress, you know. I  
6 didn't -- I didn't have much time at that point to  
7 evaluate him, you know, is he still sweating, you  
8 know. Is he -- Is he -- Can he tell me what, I  
9 don't know, his favorite lunch was back in fifth  
10 grade. Just -- Just make sure he's not -- his  
11 cheese isn't off his cracker and that he's not  
12 showing any physical signs of, you know, heat --  
13 exhaustion, which is what -- what it would have  
14 looked like at that point if I had more time with  
15 him maybe. I don't know. I didn't have very much  
16 time with him, but heat stroke, going a step  
17 further, so -- which -- it's almost one in the  
18 same. You might as well go with the more  
19 restrictive, but -- So anyways, I had him out of  
20 there within a couple minutes from him telling me  
21 he wanted to go and making that contact with  
22 Mr. Herrera, Bobby Herrera, because we have two  
23 Herreras here. Bobby Herrera from the Servicing  
24 Gang came within a couple minutes of my  
25 transmission over the radio.

1 Q And did --  
2 A He has a lot of experience.  
3 Q Did you and Mr. Newman have to assist  
4 Mr. Guillermo Herrera to Bobby Herrera's van?  
5 A No.  
6 Q Did -- Is it your statement that he walked on his  
7 own?  
8 A Yes. He had people standing next to him, but they  
9 were not assisting him. They were there just in  
10 the event he did not -- he was not able to perform  
11 the task on his own.  
12 Their hands, if they were touching  
13 him, were on the exterior of his shoulders, not  
14 underneath his shoulders. Almost like support.  
15 The buddy system, you know. We're here, it's all  
16 right.  
17 Q All right. Let's go back to Exhibit 13.  
18 A Okay. I'm in there. I'm on page 8.  
19 Q Correct. It says if the heat stress appears to  
20 be -- Let me read the preceding paragraph. And  
21 this is, again, the UP training program.  
22 A Okay.  
23 Q If we recognize the early signs of heat stress in  
24 ourselves or one of our coworkers, the remedy may  
25 be as simple as taking a break in the shade, if

1 any, or an air-conditioned vehicle, and drinking  
2 water to allow our bodies to cool. If the heat  
3 stress appears to be more severe, don't hesitate  
4 in seeking immediate medical attention.

5 Did I read that right?

6 A You did, sir, yes.

7 Q And at the time that you find Guillermo Herrera  
8 sitting on the machine, slumped over, and he had  
9 already been in the truck, or a truck, once or  
10 twice before, did it appear to you that the heat  
11 stress had not cleared as a result of being in an  
12 air-conditioned vehicle and drinking water?

13 MR. SCHMITT: Object to the form.

14 BY MR. COX:

15 Q Did he appear --

16 A What does that even mean?

17 Q Did he appear to be continuing to be suffering the  
18 effects of the heat?

19 A Well, Mr. Cox, this isn't -- this isn't me trying  
20 to go around your words, and I understood the  
21 question completely. And we're all hot out there.  
22 We're all taking breaks. We all would have fit  
23 the criteria for heat exhaustion not only in the  
24 railroad, but out there on construction crews and  
25 everywhere where this QS97 is implemented, or the

1 construction gangs, you know, the construction  
2 OSHA standards, stuff like that, we're all taking  
3 lots of breaks and would exhibit looking exhausted  
4 because it's hot. It's real hot out there, but  
5 you have to know your own limitations.

6 So when you ask me a loaded question  
7 like that, I don't really know how to respond  
8 because then everybody -- there would be nobody on  
9 the tracks. There would be nobody in jobs  
10 anywhere, you know.

11 So when you say should he have got  
12 medical attention because he exhibited what he  
13 exhibited towards me, I would say no. This is  
14 about the third time I've said that I've checked  
15 in with him, and I told you the conversation and  
16 what it was he was doing and what it was I was  
17 doing in my observations to make sure of it that  
18 we didn't have an emergency situation.

19 As far as what happened after  
20 Guillermo left me, I can't -- that's not -- I  
21 don't -- you know, I can tell you what I  
22 witnessed.

23 Q Okay. What did Guillermo Herrera say to you when  
24 he was sitting on that machine slumped over like  
25 you described? What did he say to you?

Page 62

1 A Yeah. He said I feel weird, I want to leave.  
 2 Q Now, Guillermo Herrera has been in an  
 3 air-conditioned truck for either 30 to 45 minutes  
 4 or, according to your testimony, two hours. Then  
 5 he was back in an air-conditioned truck --  
 6 A Twenty minutes.  
 7 Q -- and then about this time he's sitting on a  
 8 machine, slumped over, saying he feels weird, and  
 9 you said he looked exhausted?  
 10 A I got in the truck with him for a while.  
 11 Q No, no. No, no.  
 12 A I got in that -- I got in the mechanic's truck,  
 13 too, at one point to get some air conditioner. So  
 14 did another guy on my gang. They were trading  
 15 out.  
 16 Q Okay. My --  
 17 A This isn't limited to.  
 18 Q Please listen to my question.  
 19 A Yes, sir.  
 20 Q I know you're --  
 21 A Yes, sir. I just take the personal statements  
 22 serious.  
 23 Q When he was sitting on the machine just before you  
 24 called Bobby Herrera to come get him --  
 25 A This is not a game.

Page 63

1 Q -- he was slumped over, he said he was feeling  
 2 weird, and he had been in a truck earlier that day  
 3 for either a half an hour or two hours, and then  
 4 back in an air-conditioned truck, both  
 5 air-conditioned trucks, on two occasions.  
 6 Now, I know everybody was hot out  
 7 there. Had everybody else been in a truck for two  
 8 hours or two-and-a-half hours?  
 9 A It's a hundred-man plus gang.  
 10 Q No, no.  
 11 A There could have been. Not everybody, but yes,  
 12 there could have been guys in trucks for a couple  
 13 hours easily. And then there's other guys who  
 14 their job doesn't even require them to be in the  
 15 heat.  
 16 Q To your knowledge, did anyone else sit in a truck  
 17 for two-and-a-half hours, an air-conditioned  
 18 truck, two-and-a-half hours that -- earlier in the  
 19 day?  
 20 A To my knowledge, and on my part of the gang, no,  
 21 sir.  
 22 Q All right. Let's look on page 8 again under the  
 23 training that -- the Leader's Guide on the  
 24 training for the Union Pacific Railroad. It says  
 25 symptoms and signs of heat exhaustion; headache,

Page 64

1 dizziness, weakness, flushing of the skin.  
 2 Actions to take if this occurs: Get the person in  
 3 shade, start cooling, give fluids, seek medical  
 4 attention if symptoms do not improve in 15 to 20  
 5 minutes.  
 6 Did Mr. Herrera's symptoms, to your  
 7 observation, get better or worse during the  
 8 earlier part of the day?  
 9 A Did his symptoms get better or worse during the  
 10 early part of the day?  
 11 Q From earlier in the day.  
 12 A From earlier? Oh, from earlier in the day. That  
 13 matters. That matters. They --  
 14 MR. SCHMITT: Let me just object to  
 15 the form regarding symptoms earlier in the day.  
 16 Go ahead. I mean, who's testifying? But go  
 17 ahead.  
 18 MR. COX: That's an interesting  
 19 objection. Go ahead.  
 20 MR. SCHMITT: Well, but, Jim, I mean,  
 21 he's already testified to what he observed earlier  
 22 in the day.  
 23 MR. COX: David, stop.  
 24 Q Go ahead.  
 25 A Well, I mean, it's still -- there's -- there is --

Page 65

1 and this is how I honestly see it in my mind.  
 2 There's where we started out, you  
 3 know, he said he was lightheaded. I was  
 4 lightheaded that day. Even talking, you know,  
 5 like I -- I -- I was. And so here's where we  
 6 started out. I was lightheaded. I recovered that  
 7 fine, not to -- not to -- I know my own  
 8 limitations. That has nothing to do with  
 9 Mr. Guillermo Herrera because you're the judge of  
 10 your own body, but he said he's lightheaded. He  
 11 went to a truck.  
 12 Now, I understand what you're driving  
 13 at here, that he was in a truck more than 15  
 14 minutes, you know, and you think that would be --  
 15 No. He said he was lightheaded. His -- His  
 16 condition only improved or stayed the same, from  
 17 what he was telling me, until it was too late.  
 18 There is no this was a downward slope  
 19 throughout the day and we didn't -- we didn't  
 20 properly take care of Mr. Guillermo Herrera. No.  
 21 It was -- I was 100 percent, in my mind, focused  
 22 on my abilities to lead a group, as you keep  
 23 referencing this manual, to observe that.  
 24 And -- And it -- it hurts to see that  
 25 that -- that it could even be worded that way



Page 66

1 because he was fine, and then he wasn't, but  
2 through the course of the whole middle of the day,  
3 all those events and stuff, every safety  
4 precaution, every measure, every observation was  
5 taken to ensure that we were giving him a safe  
6 work environment to be in.

7 I don't know, you know -- and -- and  
8 like Mr. Schmitt has said here already, you know,  
9 I've said all these things. I just keep repeating  
10 myself now.

11 Q My question is was he worse off when he was  
12 sitting on the machine and you called Bobby  
13 Herrera than he had been earlier in the day?

14 A Well, yeah. In a matter of a couple minutes.

15 Q Look at page 9, if you would.

16 A Hold on. I almost -- These tabs, you know, I want  
17 to go to your tabs instead of the pages. Okay,  
18 I'm on 9. How much you got? How many tabs are  
19 these? 40 tabs? Wow. It's pretty extensive.

20 Q Let's see what I wanted to ask you about here.

21 A I don't have anything.

22 Q Under environmental procedures, Paragraph 2, it  
23 says take at least a five-minute break every hour.  
24 In California breaks must include access to shade  
25 or air-conditioned vehicles.

Page 67

1 The second bullet says use the buddy  
2 system to watch out for each other.

3 A Um-hum.

4 Q Who was Guillermo's buddy that day, if you know?

5 A Oh, I was his personal buddy.

6 MR. GARLAND: Jim, while there's no  
7 question pending, can we take a quick break? I  
8 have to use the restroom.

9 MR. COX: Sure.

10 MR. GARLAND: Thank you.

11 VIDEOGRAPHER: Time is 9:29 a.m.

12 We're off the record.

13 (Recess taken.)

14 VIDEOGRAPHER: This is the beginning  
15 of DVD number two. The time is 9:44 a.m. We are  
16 back on the record.

17 BY MR. COX:

18 Q Mr. Nicholson, we just took a break for about 15  
19 minutes or so. Did you speak with either lawyer  
20 during the break?

21 A Yes.

22 Q About what?

23 MR. GARLAND: Objection.

24 THE WITNESS: Just -- Just like how  
25 much longer we think it's going to take, and why

Page 68

1 you were asking some of the questions you were  
2 asking. I didn't understand. Just, basically,  
3 the -- the stuff that I didn't understand that I  
4 needed clarification on. Some of the questions I  
5 didn't know.

6 More about like how this is going.

7 Like am I talking too much, am I -- As far as  
8 talking too much, when I say that I mean am I  
9 talking too loud, can you hear me, like what he  
10 just said with the yes, how I'm answering.

11 I've never been in a deposition, so  
12 the setting is all new to me. So I was just  
13 asking them, you know, standard questions of that,  
14 but not anything to what we were really talking  
15 about.

16 BY MR. COX:

17 Q Okay. All right. Let's move to July 25th, 2015.  
18 I understand that was your first day as assistant  
19 foreman on the gang?

20 A Please say the date again.

21 Q July 25th.

22 A 20 what?

23 Q Fifth. The day before Mr. Herrera's heat injury.

24 A July 25th, 20 --

25 Q '15.

Page 69

1 A -- 15, yes. I think you said '16. On 2015 --  
2 July 25th, 2015, yeah, that was my first day on  
3 the gang, sir.

4 Q Tell me -- Did you join the gang that morning?  
5 Did you come sometime during the day? Were you  
6 there for the morning job briefing?

7 A Yeah. I had two -- two full days.

8 Q So you were there for the job briefing on the  
9 morning of July 25th.

10 A Yes, that's correct.

11 Q And what -- what work did the Cleanup Gang or  
12 Quality Control Gang do under your authority on  
13 July 25th?

14 A We -- What -- We did quality control.

15 Q And tell us what that -- your understanding of  
16 what that was. My question is how did you learn  
17 what you were supposed to do on -- as assistant  
18 foreman of the Quality Control Gang?

19 A Well, from -- I mean, from the guys there. Those  
20 guys had been doing it for several months, if not  
21 years, prior to me coming there.

22 The -- The assistant foremen, you  
23 know, they don't -- they're there for the on-track  
24 safety, and also for safety concerns, and also  
25 making sure nobody is doing any unsafe behavior.



1 Those guys gave me a very clear idea of what was  
2 supposed to take place and how it was supposed to  
3 take place. And if I saw anything that was  
4 subject to unsafe behavior, then I would have said  
5 something, but as far as like what we do, we make  
6 the tracks safe so that trains can run on it after  
7 the fact.

8 I mean, in anything you doing in  
9 railroading, I mean, that's our goal as being in  
10 the Engineering Maintenance Department.

11 Q Okay. Did --

12 A You can tell when a track's unsafe.

13 Q Can we -- Is it fair for me to say that you were  
14 learning on the job, you had on-the-job training  
15 that day?

16 A Yes, sir.

17 Q No supervisor had told you how to do the job or  
18 how the job was to be performed or anything like  
19 that. You learned on the 25th and on the 26th?

20 A Yeah. Well, we have -- like you said, those  
21 assistant foremen, we all meet up in a group in  
22 the morning and we get our machine operators,  
23 employees checked in with us. That's just not  
24 something that happens infrequently or  
25 sporadically. Every single morning that is part

1 of our -- I have a briefing in the morning for a  
2 foreman's meeting. Then we have an actual  
3 briefing with the whole group, and then we have  
4 subgroup briefings which, if you want to make  
5 reference to your own tab there on the job  
6 briefing, that would be a subgroup on that job  
7 briefing sheet.

8 So there was a lot of information  
9 passed to me. And me having the background I had  
10 with concrete ties, I wouldn't say I was ignorant,  
11 by any means, to what needed to take place. Like  
12 I said, we could take a step back a little bit  
13 from the actual duties being performed, and look  
14 and see that the track needs to be safe when we  
15 leave for trains to run on it. It depends on what  
16 class of track it is, too, you know what I mean.  
17 It's -- That's -- That's -- The standard goes, you  
18 know, some tracks, you know, if they're not going  
19 to have any heavy freight on it or commuter-type  
20 things, then they don't have as many things that  
21 need to be done, but I can see that, having the  
22 background I have in concrete, you know, all the  
23 clips need to be on, we need to have safe ties in  
24 place, make sure that we're not going to put  
25 anything that's going to jeopardize the safety of

1 the track out there after we're gone.

2 Q All right. We all have to catch a plane. So if I  
3 interrupt you or feel like you're getting too  
4 broad in your answers --

5 A Yes.

6 Q -- I might interrupt you.

7 A Okay.

8 Q We need to stay kind of focused here. You  
9 referenced your concrete tie experience. I  
10 thought I understood earlier that July 25th, 2015  
11 was the first day worked on concrete ties.

12 A For rail. Big difference.

13 Q Okay. Had you worked on a Concrete Tie Gang  
14 before?

15 A Yeah.

16 Q When did you do that?

17 A Eight months prior. About eight or nine months  
18 prior to going to a Curve Gang and then over to --  
19 It's like eight or nine -- Maybe eight to -- Let's  
20 see here. Let me tally it up real quick for you,  
21 and if you want to interrupt me --

22 Q Just an estimate.

23 A Okay. It's okay -- An estimate's okay?

24 Q Yeah.

25 A Okay. An estimate would be eight -- eight months.

1 Approximately eight months on a Concrete Tie Gang,  
2 but not just in one area. I went from the front  
3 to the back of that gang. It actually initially  
4 started out as a TRT Gang, which replaces rail and  
5 ties at walking speed, but that is contracted out  
6 to Harsco, who runs the machines, so I was  
7 observing them.

8 So I had a little bit of background  
9 with rail and concrete ties. I apologize for the  
10 misconception. I mean, in our world there's a big  
11 difference between rail and -- I mean, between  
12 wood, concrete, but also rail and ties.

13 Q Okay. So this is your first -- July 25th was the  
14 first time you'd ever worked on a Steel Gang on  
15 concrete ties.

16 A July -- I'm sorry.

17 Q July 25th, 2015, the first day you had worked on a  
18 Steel Gang on concrete ties.

19 A Steel Gang on concrete ties. Steel Gang and --  
20 Yes. Yes, that is correct.

21 Q All right.

22 A Yeah. And that's what I answered to earlier.

23 Q Have you ever operated a P car?

24 A Yeah.

25 Q Are you qualified on a P car?

Page 74

1 A No.

2 Q Have you ever worked it as an assigned job?

3 A No. I've never done the production on it. I've

4 just moved one. When you said have I operated a

5 P car, I've had to move one down the tracks just

6 to get it out of the way.

7 Q Okay. But you've never clipped or de-clipped

8 using a P car.

9 A No, no, but there's really not much to it.

10 Q Okay. Now, do you remember what time you started

11 on July 25th that morning?

12 A 5:30 was the foreman's meeting, and 6 o'clock was

13 the start time and the briefing was to commence

14 for the larger group.

15 Q What time did you actually start working, if you

16 know? July 25th I'm talking about now.

17 A Oh, okay. It's the same. It holds the same for

18 both days, as far as what I've given you so far,

19 but what time we actually started working at? I

20 would say probably between 7:30 and 9.

21 Q All right. And do you know how -- do you remember

22 how long you worked on July 25th?

23 A Go back on that. I'm sorry. I had to think about

24 that a lot. It's -- The -- That's a wrong answer

25 because we start at -- 6 is our meeting, and we

Page 75

1 were really just right there. It might have taken

2 us 20 minutes to get out to the job. So it had to

3 be like 6:30 to -- like maybe 7 -- 7 to 8:30.

4 There's no way we started at 9. That would be way

5 too late. And it doesn't -- it doesn't match up

6 at all.

7 Q How late did you work that day?

8 A 5-ish.

9 Q All right. Let's go to July 26th. Do you

10 remember when you actually began to work on

11 July 26th?

12 A That would be around the same -- the time in the

13 morning. The timeline would be --

14 Q Would you have any reason to dispute the

15 timekeeper's records of when you all started to

16 work on July 26th?

17 A We started work at 6.

18 Q And when did you actually start working on the

19 track?

20 A The timekeeper has that?

21 Q Yes, but what is your estimate?

22 A No, he doesn't.

23 Q What is your memory?

24 A Out there on the tracks it was -- All I can say is

25 before 8:30. Between 6 and 6:30, because our

Page 76

1 briefing takes at least 30 minutes, and 8:30. We

2 were definitely at it. There was no reason not to

3 be out their working. There's nothing there in

4 between, but to give you an exact time, no, I do

5 not have that. Before 8:30.

6 Q Was there -- What distance was there between the

7 Cleanup Gang and the balance of the gang on

8 July 26?

9 A That's kind of tricky. They did a skip. They put

10 about a mile on us, a little less than a mile, and

11 then there's a skip. That first day they just ate

12 up that section of track. It wasn't very much. I

13 don't remember exact footage, you know, maybe a

14 half a mile or something, but then there was an

15 area that did not need any attention. And I don't

16 know how many miles they went up the way, but then

17 they were gone. I know that they got a lot done

18 after that, but -- yeah. So there's a skip there.

19 So they were at least a couple miles up the way.

20 Q Was the Quality Control Gang falling behind?

21 A Yeah.

22 Q Why?

23 A Why were we falling behind? Because there was a

24 lot of work there. The track needs a lot of

25 attention. It wasn't an easy job.

Page 77

1 Q Did anyone -- any supervisors ever tell you to

2 hurry up or catch up?

3 A No. No, they knew I was new and -- yeah.

4 Q All right. Let's talk about who was regularly

5 assigned to your gang on July 26, 2015. What was

6 Guillermo Herrera's job, his assigned job?

7 A Okay. Through actual verbal conversation with him

8 I found out that he was assigned to the speed

9 swing.

10 On the 25th, Jeremy, another guy on

11 the gang, operated it the whole day right in front

12 of him, and he had nothing to say about that or

13 anything. When it came down to it, when Jeremy

14 was gone the next day, on the day of his actual

15 injury, that's when he told me he was assigned to

16 it. I had no idea. He had already been sitting

17 on that P car for the whole day of the 25th,

18 and --

19 Q Sitting on the --

20 A -- this is all relative -- What?

21 Q Sitting on the P car?

22 A Yeah, on the 25th. The P car. He was on the

23 P car on the 25th.

24 Q Who?

25 A Guillermo Herrera.

Page 78

1 Q Okay. Now, was Guillermo Herrera assigned to the  
2 P car on July 25th and 26th?  
3 A Finding out later, no, he was not.  
4 Q He was a speed swing operator, but Jeremy Marsing  
5 was operating the speed swing.  
6 A The day prior, yeah, on the 25th.  
7 Q Do you know if Jeremy Marsing is qualified to  
8 operate a speed swing?  
9 A I do not know. I do not know. That I do not  
10 know. Never even -- It's never been any -- That  
11 has never been subject to any discussion.  
12 All I know is that, you know, between  
13 Guillermo and Jeremy, they were okay with both of  
14 them doing what they were doing on the 25th. Come  
15 the 26th, Jeremy was gone. That -- That changed  
16 things a little bit.  
17 It's at that time I found out that --  
18 that Guillermo -- I inquired about using the  
19 equipment to move some ties over that were under  
20 some welds because that's a no-no, and I was told  
21 from the foreman that he had seen Guillermo  
22 operate the speed swing, and it wasn't done safely  
23 so he was not to operate it. I said okay.  
24 Well, what's his face, Logan, Logan  
25 was there, and I said can Logan operate it. And

Page 79

1 he's been on that 8501 for a number of years, I  
2 believe. It's speculation. I'm pretty sure.  
3 He's got a lot of time there. He said yeah, it's  
4 okay if Logan operates it. And that's because  
5 Logan's esteemed. He's not somebody that's new  
6 within the last couple years or anything. Logan's  
7 been around, and he knows -- he knows how, you  
8 know, how Logan works. And so I -- I put Logan on  
9 the machine, and Guillermo was upset about that.  
10 Q Put Logan on which machine?  
11 A On the speed swing, because I was given the  
12 go-ahead, yeah. It was parked off to the side,  
13 and I said we need to be utilizing that to move  
14 these ties.  
15 Q Okay. And do you know if Logan Newman is a  
16 qualified speed swing operator?  
17 A I do not. I was just told he had the go-ahead,  
18 so, I mean, on the assumption that he was, I mean,  
19 you know, it's like questioning my, you know, my  
20 superior's ability to, you know, to -- that's --  
21 that wouldn't be something that I'm like well, is  
22 he qualified. I said could he run it, he told me,  
23 and I said okay, that's good. All right. We'll  
24 get Logan in there.  
25 Q All right. So just tell me who was on the gang on

Page 80

1 July 26.  
2 A What?  
3 Q On July 26, who was on the gang?  
4 A There's --  
5 Q On your gang.  
6 A -- a lot of people on --  
7 Q On the Quality Control Gang under your authority  
8 on July 26.  
9 A On July 26, the day of the incident, Dennis was on  
10 the camp car. I don't have a last name.  
11 Q We'll learn it's Dennis Dickison.  
12 A Dickison, thank you. And then Logan.  
13 Q What was Logan Newman's job?  
14 A He was a laborer.  
15 Q He was normally the bus driver, wasn't he?  
16 A Correct.  
17 Q And then he -- because you were shorthanded, he  
18 was assigned to work as a laborer on the gang; is  
19 that right?  
20 A Yeah. I do not believe he was assigned. He came  
21 there on his own. I thought he was like the  
22 clouds opened up. I was so happy he came down  
23 there because -- I wasn't asking for double the  
24 work. I was just doing what we could get done,  
25 and --

Page 81

1 Q So Dennis Dickison is the camp car operator.  
2 Dennis Dickison was on light duty; is that right?  
3 Do you recall that?  
4 A That is correct, yeah.  
5 Q All right. And Logan Newman, the bus driver, came  
6 to help out. Who else was on the gang that day?  
7 A The -- On the 26th -- Between the 25th and the  
8 26th, intermittently the Servicing Gang came to  
9 help. And on the 26th they did come to help  
10 because -- yeah, they did come to help. They were  
11 helping move ties for the time that we had that  
12 speed swing.  
13 We did like one. I don't even think  
14 we did one. We got the first one and everybody's  
15 like ah, it's so hot I do not want to do that. So  
16 we got the speed swing like, you know, because I  
17 was listening, like you said, me being new in OJT,  
18 I was listening to what they had to say. They  
19 said we can use the speed swing, you know, we did  
20 yesterday when Jeremy there was. So I made sure  
21 to flag down a foreman and got the okay.  
22 And fortunately, not for Guillermo,  
23 who had been already operating the P car, so I  
24 thought they were at peace with that whole  
25 situation, don't know the details, but had Logan,

1 who I got the okay because I felt -- we  
2 wouldn't -- you know, I don't know that we would  
3 have been able to use it hadn't Logan been there.  
4 And I don't know what Logan's qualifications are,  
5 but it worked out pretty good, but --

6 Q Okay. We know there's Dennis Dickison. We know  
7 there's Logan Newman. We know there's Guillermo  
8 Herrera, and we know there's you.

9 A Yeah. There's three servicing guys, too.

10 Q Really? What are their names?

11 A One of them's name is Scott. I don't know his  
12 last name. They call him Scotty. And another  
13 one -- you know, there's two other guys there and  
14 they're on the tamper. They're Bobby Herrera's  
15 guys.

16 Q What were they doing?

17 A They would come up and help. Like I said,  
18 intermittently they would come up and help out.

19 Q Why?

20 A Because they had already caught up behind us.  
21 Their job is to surface everything behind us. And  
22 because we were moving so slow they were at the  
23 standstill. So they got out and gave us a hand.

24 They did have a lot of problems with  
25 that tamper. So even times when they could help

1 out they didn't because they were back there --  
2 Well, they couldn't because they were working with  
3 their machines that were constantly going down on  
4 them. And that actually held pretty true for the  
5 rest of my duration on the gang. Those machines  
6 were going down quite a bit.

7 Q Okay. Let's -- What is your recollection of  
8 whether or not the P car was being used to clip or  
9 de-clip the clips on the surface -- on the Quality  
10 Control Gang on July 25th and 26th?

11 A What is my recollection of the clipper car -- its  
12 ability to clip and de-clip? One of them could  
13 only -- Between the camp car and the clipper car  
14 was -- they're essentially the same thing except  
15 that the camp car has the ability to manipulate  
16 the rail over so we can get those insulators in in  
17 order to put the clip on.

18 The -- The -- The P car could only  
19 clip. So anything that would fall behind that car  
20 was for the camp car to get, but -- yeah. So  
21 that's -- that's -- that's what it is.

22 Q Let me ask the question again.

23 A Yeah, go ahead.

24 Q Were you permitting the use of the P car to clip  
25 and de-clip the clips on the concrete ties on

1 July 25th and 26th?

2 A Half the time. 50/50. It got to the point where  
3 Logan, who, like I said, he's esteemed, has a lot  
4 of time on, said he's not -- he's leaving  
5 everything for me. And I would come up there  
6 and -- I came up there and talked with Guillermo  
7 and -- and just said, you know, we're getting a  
8 lot back here, and these guys from their  
9 experience are telling me that, you know, there's  
10 a lot of clips missing, I think it would be more  
11 beneficial that we just swap out taking care of it  
12 back that, being that machine he was on it doesn't  
13 de-clip anyway. All it does is clip. So he's  
14 going to leave stuff no matter what.

15 Q Who?

16 A The operator of the P car, which would have been  
17 Guillermo at that time. Like I said, half the  
18 time we were using it, and half the time we  
19 weren't, but the only person who was ever on it  
20 was -- was him, unless it was being moved. I  
21 moved it, but I didn't operate it. I was in the  
22 same boat.

23 Q Why wouldn't you use the P car full time?

24 A Well, like I said, it was busted, and he was  
25 missing too many things, and he was missing far

1 too much.

2 Q The P car was busted?

3 A Well, the -- it wasn't -- it didn't have -- it  
4 wasn't busted. It just didn't have the ability to  
5 de-clip, and the car behind it did. It was really  
6 just a -- a -- nice to have there to have one more  
7 functionality.

8 I mean, it was deemed as safe to  
9 operate by a mechanic, but its capabilities  
10 weren't able to catch all the flaws ahead, you  
11 see. So I was already walking behind the camp car  
12 checking our QC making sure that -- especially  
13 since we're going as slow as we are, that we're  
14 dishing out, you know, good quality.

15 So I brought everybody to the back,  
16 and I was going back behind the gang, not very  
17 far, maybe a hundred foot tops, and just making  
18 sure that we're leaving good quality behind.

19 So the machine -- I guess busted is a  
20 bad word. It wasn't operating at its full  
21 capacity, but at the same time it still made our  
22 jobs easier and it still had a purpose.

23 As far as the camp car goes, that  
24 could actually take care of all the work on its  
25 own. And Guillermo -- like I said, Logan had told



Page 86

me that Guillermo is not helping our cause to do QC up there on that car.

Q Who told you that?

A Logan Newman.

Q Okay.

A And I was observing it, too. He didn't just say I know about Steel Gangs and this is what's going on. No. I used critical thinking, I looked at it, and I noticed he's missing things that he even spray painted himself.

The whole object is to go ahead, walk ahead, set out the clips you need, even get them lined up so that you can clip. Remember, you can't de-clip. So you just have to leave that behind. You can mark it for the guys back there. You could mark the tie that's going to need de-clipped and clipped again. You're supposed to do that because that's what they were doing, that's their system they had in place, but what Logan was telling me was he wasn't marking those ties that needed de-clipped, and we were missing things.

Q Who wasn't? Guillermo wasn't?

A Yeah, Guillermo wasn't. He had a can of spray paint up there, and he would go out in front of

Page 87

that P car and mark what needed to be done, but he was not -- he was not marking it, and -- and there was no reason why. I went up there and had a couple job briefings with him, and I couldn't understand why, you know. And --

Q Is this on July 26th or 25th?

A The 25th. The 25th. Yeah. The 25th was our -- was our kind of -- I don't know if he was happy that I bumped in or what, but he kind of -- I kind of felt a little bit -- some negative vibes coming off of him. I mean, he didn't -- he didn't really seem like he wanted to work with me.

You know, I don't know -- it's kind of like the whole theme that you started to go across, you know, like -- like well, you don't even know what you're doing, and I'm like I'm learning and actually -- we're not going to do anything unsafe and we're not going to do double the work, he was -- because the next day in the morning, the day of the incident, he apologized to me for his behavior on the 25th. That happened. We had a conversation. He's like I'm sorry about yesterday. And I said hey, I'm new. I get it, you know. Things like this happen. Let's just have a clean slate. Let's move forward.

Page 88

Q So on July 26th was the P car being used to clip or de-clip the clips?

A Let me think. No, because we didn't -- we didn't -- with Guillermo saying that he needed a break and then he needed to go to the mechanic's car, there was nobody to run it. I have to be out there to take care of the on-track safety and be there with the guys and also watch the cleanup.

So there was nobody to operate it on the 26th starting, you know, around 9 or 10 when he said he was lightheaded.

Q So had the P car been used at any time to clip or de-clip the clips on July 26th?

A Maybe for -- you know, before he -- before he felt lightheaded he might have done a little bit that -- that one instance because him and Logan were trading out sitting on it.

Q Well, sitting on it is different than operating it.

A Well, they still were operating it, too. And then once Guillermo was down and out, I mean, that's really in the morning it was done, so it was operated.

Q All right. So --

A You know, you're going to mark stuff, we're going

Page 89

to help each other out.

Q I'm just asking about was the P car used to clip or de-clip --

A Yes, it was.

Q -- on July 26th?

A Yes, sir, it was used.

Q Now, that's different than what you just told me early. Was it used, or not?

A Yes.

Q By whom?

A Logan and Guillermo. I didn't tell Guillermo he couldn't operate it if he's on it. I seen him operating it.

Q Do you have a memory of a conversation with the members of the Cleanup Gang discussing with you that the P car should be used rather than doing the work manually?

A I don't remember that.

Q If they were to claim that --

A There was lots of suggestions coming from every -- every direction, I mean, you know.

Q Well, was one of those conversations or suggestions that the P car be used rather than attempting to clip and de-clip the clips by hand?

A If that conversation was had it wasn't had with



1 me.

2 Q Who would it have been had with?

3 A I don't know. You're asking me a question that  
4 I -- that -- No. The answer is no.

5 Q If the members of that gang claim that they had  
6 come to you and asked you to use the P car rather  
7 than doing the job manually, would you dispute  
8 that?

9 A Yeah, because I just told you that Logan told me  
10 that he was not maintaining what they had been  
11 doing previously and that even Guillermo hadn't  
12 been on there that long. He was in a project in  
13 California where he wasn't on it really all that  
14 long, on the P car. And that's a different  
15 territory and a whole different track conditions.

16 So Logan is the one who said he's  
17 missing a ton, because I was like well, wouldn't  
18 it be easier with the clipper/de-clipper. And  
19 Logan, having as many years he has on that gang  
20 was like no, he's missing stuff.

21 And I've only got him there, you know  
22 what I mean, and I'm helping out, too, where I can  
23 without making it a safety hazard because, like I  
24 said, I have to have my head on a swivel for any  
25 other unsafe conditions. So no, nobody came to

1 me. Actually, it was quite the opposite.

2 Q Nobody came to you urging you to use the P car  
3 rather than have the men do the work by hand, is  
4 that what I'm understanding your testimony to be?

5 A Yeah, I don't remember that. I do not remember  
6 somebody coming to me telling me that we need to  
7 use that P car.

8 I had those guys trading out, but  
9 Guillermo had displayed that in his only --  
10 somebody else can run it. If somebody else came  
11 and said I'd like to run it and they did a good  
12 job, I mean, that's -- that's hypothetical because  
13 that didn't happen because we didn't have that  
14 many people there, but I'm saying that he, you  
15 know, he was not -- he was not contributing. And  
16 this is not when he was on break. This is like --  
17 It was like well, it doesn't seem like there's a  
18 reason to have somebody just bumping that machine  
19 up because that's the product we're getting.

20 We kept going -- I mean, I went in  
21 front of him and I went behind him and seen that  
22 what needed to be happening there wasn't  
23 happening. The ties were not marked. And I  
24 understand how it works and what needed to be  
25 marked. I got a good understanding before I just

1 jumped to conclusions.

2 And like I said, you know, I'm trying  
3 to keep the moral of my gang that I have authority  
4 over, my subgroup, and it was unanimous that he'd  
5 have been better helping us back there.

6 Q All right. Now, my question was did anybody use  
7 the P car on July 26th?

8 A Yes.

9 Q Who?

10 A Guillermo and Logan.

11 Q For what period of time?

12 A Up until 9 or 10 when Guillermo went away. There  
13 was nobody else to even be on it. Then we were  
14 just bumping it up.

15 Q And after Guillermo left was it used?

16 A No. No. Going later in the day, no.

17 Q Why not?

18 A Because everything was moving a lot slower, and I  
19 wanted to keep the group together. We weren't  
20 laboring very hard at all, but -- especially with  
21 his conditions, we just all needed to stay  
22 together. I mean, I wasn't going to have him just  
23 sitting way up there on the machine without radio  
24 communication, so we all stayed together. We all  
25 went down the tracks together and we didn't -- we

1 did not -- you know, we didn't work at a grueling  
2 pace, let alone -- We did more -- We did more  
3 breaktime than we did working.

4 Q Okay.

5 A It was a really bloody hot day out there.

6 Q How would you characterize the weather on  
7 July 25th? And then I'm going to ask you about  
8 the 26th.

9 A I mean, it was -- it was hot. That's all I can  
10 say.

11 Q How about the 26th?

12 A It was hot, and it was even a little bit more  
13 humid. It was pretty humid that day, from my  
14 memory.

15 Q Forgive me. The -- The length of your answer  
16 confuses me a little bit. Tell me when and who --  
17 when the P car was used and by whom on July 26th.

18 A Guillermo Herrera and Logan Newman were using it  
19 before -- before Guillermo said he was  
20 lightheaded, but the thing is, though, it was take  
21 as many breaks as you can.

22 So if they did something, it might  
23 have been for a couple minutes, but I did see them  
24 use it a little bit, just piddle around with it.

25 You know, I'm not -- I'm not going to micromanage

Page 94

1 them. I mean, I appreciate any extra effort, but  
2 I did witness both of them operating it and  
3 marking ties.

4 Q Were they using -- Is it your memory that they  
5 were using the tie clipper and de-clip to clip and  
6 de-clip ties or --

7 A No.

8 Q -- or clips? Is that what they were using it for?

9 A They were using it to clip ties. It doesn't have  
10 the ability to unclip. And that's why he was  
11 supposed to be marking things that we were going  
12 to take care of as we approached it with that camp  
13 car, but it wasn't getting done.

14 Q All right. Now, I asked you why you called Bobby  
15 Herrera earlier when Mr. Herrera was having his  
16 heat distress. Why did you not call an ambulance?

17 A I -- I want to say, and -- and it's only because I  
18 want to say it, I can't remember, but, you know,  
19 in that couple minutes, you know, I'm sure I asked  
20 him, but I don't remember, but the way I gauge the  
21 situation is that, you know, he's leaning up  
22 against the machine, he's holding his own weight,  
23 he's still able to talk fine, he's sweating, he's  
24 making eye contact, you know, he looks tired, and  
25 that's it.

Page 95

1 I don't remember the exact words of  
2 the conversation or, you know, he never -- I know  
3 for sure he never said could you call an  
4 ambulance, I know that, but I wasn't -- I  
5 wasn't -- there definitely wasn't -- it didn't  
6 appear to be something that he wished to happen,  
7 but like I said, I can't put words in his mouth  
8 and I can't say what I said to him being over a  
9 year ago, but that happened the way it did for  
10 that reason because it was custom to that  
11 circumstance.

12 Q It was accustom to that circumstance?

13 A It was custom -- It was -- It was special to that  
14 circumstance that he appeared like he was still  
15 okay. He was not on the ground. He was not --  
16 You know, his shoulders were down, but he wasn't  
17 like passed out or anything. He wasn't like -- He  
18 could still walk. He walked himself to the van.

19 It wasn't -- It wasn't a situation  
20 where he alarmed everybody. He still was just  
21 very -- He just looked tired. That's it, you  
22 know. And so within two minutes he was gone.

23 I mean, it was -- so we're talking  
24 about decision making within that two minutes, you  
25 know what I mean. If he'd have been there just a

Page 96

1 little bit longer, I probably would have called an  
2 ambulance.

3 Q All right. Was your gang undermanned on July 25th  
4 and 26th?

5 A Yes.

6 Q Do you know what a full complement of employees on  
7 a Quality Control or Cleanup Gang is?

8 A Is that Union Pacific terminology?

9 Q What -- Yeah.

10 A Whose terminology is that, a full complement?

11 Q When a -- When a -- When everybody that's supposed  
12 to be assigned to a gang, the Quality Control or  
13 Cleanup Gang, how many people are on that gang and  
14 what are their jobs?

15 A It really depends on workload. If you got crystal  
16 clear track, you go to where the work is. If you  
17 got a lot of work, you get as many people as  
18 possible back there. That's a full complement.

19 Q When they -- Do you know what a -- the full  
20 complement on a Quality Control Gang is supposed  
21 to be when the jobs are placed on the bid roster  
22 or with Crew Management Services?

23 A That was my answer.

24 Q What?

25 A That it's according to the workload.

Page 97

1 Q On a day-by-day basis, or within the day?

2 A Yeah. On a day-by-day moment-by-moment. If we  
3 run into a bomb, we're going to need more help.

4 Q Do you know how the UP lists the gang as a full  
5 complement of employees?

6 A (Witness nods.)

7 Q No, okay.

8 A There was a lot of vacations.

9 Q Lot of vacations?

10 A Yeah, that's what it was. I don't necessarily  
11 know that this full complement business is what --  
12 what -- that they didn't have enough jobs there.  
13 I just -- My understanding was that there was guys  
14 on vacation.

15 Q And that's why your gang was undermanned?

16 A Yeah. Partially, I'm sure. When I say partially,  
17 if there's any other reasons I wasn't aware of it.  
18 I did know that. I remembered that because, I  
19 mean, like I said, I know to know, you know. We  
20 were behind, but we weren't working beyond our  
21 means. I'm just like if you guys ever want to  
22 catch up, you're going to have to send people back  
23 here at the end of the day, or we're just going to  
24 work at the pace we're going.

25 Q Okay. Now, let's -- tell me what it is that

Page 98

concerned you about Guillermo Herrera to call -- cause you to call Bobby Herrera.

A That he told me he wanted to leave. That's what concerned me. That's -- You know, that's like -- that was -- it was sad. It was sad because he was fine up until that point.

That's what concerned me is that out of nowhere, out of left field he's not okay. He's saying he feels weird. Physical, external indications, I didn't have any except to say that he looked tired.

Q And where did you think Mr. Herrera was taking Guillermo Herrera when you put him in the van?

A I didn't know.

Q You didn't give it a thought?

A No, because like I said, he -- he looked tired. He said he needed to leave. He didn't say I need to go to the hospital, get me out of here. I don't know what's going on. I mean, he was coherent and he said I just -- I want to leave, you know. And in two minutes, how much can you really talk about.

I really didn't give it a thought where he was going. I was just happy that he was on his way to wherever it is he thought he needed

Page 99

to go. Honestly. He walked to that van.

Q If, indeed, the P car was used some during the morning of July 26th, did its use stop and Mr. Guillermo and Logan Newman have to de-clip by hand?

A We -- Yeah, we pulled some -- we pulled some clips off.

Q We? Did you participate in the work?

A Only if it was safe to do so, but not -- I did a little bit, yeah.

Q Tell me what a little bit means.

A Well, like digging those ties over when we were using the speed swing, I was in there digging. Guillermo got upset that we were in the five-foot radius of the boom. And I said well, you know, policy is if we have an enhanced job briefing and we all know what's going on, we can be in that five feet. And he was never even in it, but I had had that briefing with Logan.

So then he stepped aside. He didn't even participate, he didn't feel it was safe, and I didn't -- I wasn't going to argue with him, you know. I didn't -- I was fine with that. And like I said, we did more than breaktime than we did working that day, so -- it was just an odd day.

Page 100

So it was definitely nothing that I was going to push the envelope on, but I dug out some of those ties with one of the surfacing guys at the time that we had that speed swing there and then de-clipping a little bit.

And then there was a couple things that the guys missed. Even that camp car, like there was a piece of steel stuck under the rail, under the pad. And so I actually just grabbed the tools myself and went back there and did, you know, because that's what I sign off on is the quality control.

So there was a few things I did instead of saying, you know -- One time I made them go back because I needed an automated piece of equipment. I could not get it. I tried. I had a jack and everything, but other than that, I did the handwork myself back behind the gang, the stuff that they did miss, but it was pretty good quality, I will say that, that out of all falling behind and, like you said, people on vacations and whatnot, I -- I was able to keep the quality pretty good. Sorry that was a tangent. I know you're in a hurry here.

Q Were you demoted to -- or transferred to another

Page 101

gang after this incident?

A No. Absolutely not. No. I still have my assistant foreman qualification.

Q No, I mean within 8501. Did they transfer you to another gang?

A Oh, no. Oh, no. They didn't -- They didn't demote me. I was still an assistant foreman.

MR. COX: Let's just go off the record a second. Let me look at my notes here.

VIDEOGRAPHER: Time is 10:29 a.m. We're off the record.

(Recess taken.)

VIDEOGRAPHER: Time is 10:37 a.m. We're back on the record.

MR. COX: Mr. Nicholson, I don't have any other questions.

MR. SCHMITT: I will wait with my questions until the time of trial. So we're done.

VIDEOGRAPHER: This concludes the deposition. The time is 10:37 a.m. We are off the record.

(The attorneys have standing orders.)

(At 10:37 a.m. the deposition concluded.)

1 STATE OF WISCONSIN )  
2 MILWAUKEE COUNTY ) SS:  
3 I, KIM M. PETERSON, CM, Registered  
4 Professional Reporter and Notary Public in and for the  
5 State of Wisconsin, do hereby certify that the deposition  
6 of SCOTT NICHOLSON, was taken before me at 207 East  
7 Michigan Street, Milwaukee, Wisconsin, on the 10th day of  
8 August, 2016, commencing at 8:02 a.m.

9 I further certify that I am not a  
10 relative or employee or attorney or counsel of any of the  
11 parties, or a relative or employee of such attorney or  
12 counsel, or financially interested directly or indirectly  
13 in this action.

14 In witness whereof, I have hereunto  
15 set my hand and affixed my seal of office on this  
16 18th day of August, 2016.

17  
18  
19 \_\_\_\_\_  
20 Kim M. Peterson  
21 Notary Public in and for the  
22 State of Wisconsin

23 My commission expires March 17, 2018.  
24  
25